UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE RAKOFF

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

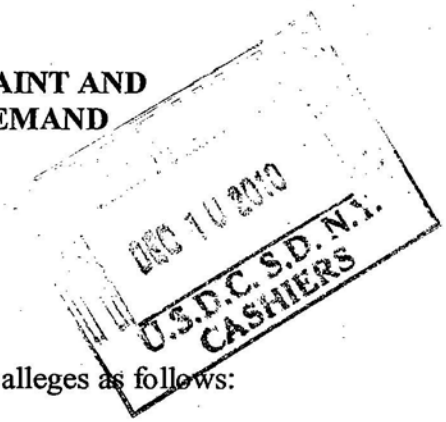
v.

VITESSE SEMICONDUCTOR CORPORATION, LOUIS R. TOMASETTA, EUGENE F. HOVANEC, YATIN D. MODY, AND NICOLE R. KAPLAN

Defendants.

No. 10 Civ. 10 CIV 9239

COMPLAINT AND JURY DEMAND



Plaintiff Securities and Exchange Commission ("Commission") alleges as follows:

SUMMARY

1. During the period in or about 1995 through April 2006, defendant Vitesse Semiconductor Corporation ("Vitesse" or the "Company") engaged in fraudulent revenue recognition practices and stock options backdating misconduct. This fraud was orchestrated by certain of Vitesse's most senior former executives.

2. Starting in or about September 2001 and not ending until April 2006, Vitesse engaged in an elaborate channel stuffing scheme in order to improperly record revenue on product shipments. Defendants Louis R. Tomasetta ("Tomasetta"), co-founder and former Chief Executive Officer ("CEO") and director of Vitesse, Eugene F. Hovanec ("Hovanec"), former Chief Financial Officer ("CFO") and Executive Vice-President of Vitesse, Yatin Mody, former Controller and CFO, and Nicole Kaplan, former Manager and Director of Finance of Vitesse, each knowingly played a significant role in the Company's execution of this fraud. Specifically, Tomasetta, Hovanec, Mody and Kaplan caused the Company to immediately recognize revenue

and record invalid accounts receivable for product shipped at period end to its largest distributor, Nu Horizons Electronics Corporation, even though it had an unconditional right to return all of the product. The right of return was accomplished through undisclosed side letters and oral agreements. The effect of this fraud was to materially inflate the revenue that the Company reported in its financial statements in 14 quarters from September 2001 through early 2006.

3. Tomasetta, Hovanec, Mody and Kaplan compounded their fraudulent revenue recognition practices by failing to timely record credits that were generated by Nu Horizons' return of product tied to the invalid accounts receivable.

4. In order to conceal the true age of the accounts receivable created by the failure to timely record credits from the Company's external auditor ("Auditor"), Hovanec and Kaplan then directed that cash receipts received by Vitesse from Nu Horizons and other customers be misapplied to these aged invalid receivables. Some of the cash received from Nu Horizons, in the form of prepayments, was used to camouflage the aged receivables. Hovanec personally negotiated the amount of these prepayments.

5. From 1995 to 2006, Tomasetta and Hovanec also engaged in a scheme to backdate stock option grant dates for their personal benefit and the benefit of other Vitesse executives and employees. Tomasetta and Hovanec intentionally selected grant dates that were days, weeks, and months in the past. Tomasetta and Hovanec used option grant dates that were different from the dates on which Vitesse's Compensation Committee had actually approved and granted the options. Tomasetta and Hovanec disregarded the Compensation Committee's approval dates because they wanted to pick trading dates for the grants that coincided with low points in the Company's stock price. Those favorable prices were used as the exercise prices for

the options. Tomasetta and Hovanec also used hindsight to reprice option grants as Vitesse's stock price declined.

6. In total, Tomasetta and Hovanec backdated or repriced 40 option grants to thousands of employees. These options represented over 60% of the total options that Vitesse awarded from 1995 to 2006 to newly hired and existing employees and officers. Tomasetta and Hovanec collectively reaped millions of dollars in illicit profits from exercising backdated options. Despite representing in Vitesse's periodic filings made with the Commission that the Company did not grant in-the-money options and complied with applicable accounting rules, Tomasetta and Hovanec intentionally manipulated grant dates in order to award in-the-money options and failed to ensure that Vitesse properly recorded compensation expenses for the backdated grants. As a result of the backdating, Vitesse failed to record approximately $184 million in compensation expense, overstating its pretax income or understating its pretax loss by as much as 45% annually for its fiscal years 1996 through 2005.

7. In addition, after the *Wall Street Journal* (*"Journal")* questioned Vitesse in November 2005 about the legitimacy of its option granting practices, Tomasetta and Hovanec engaged in a cover up to hide some of their prior option backdating misconduct. Between November 2005 and April 2006, Tomasetta and Hovanec lied to Vitesse board members and to Vitesse's Auditor by falsely telling them that past option grants were proper and correctly accounted for in the Company's books.

8. In furtherance of their cover-up, Tomasetta and Hovanec also fabricated minutes of two non-existent 2001 meetings during which Vitesse's Compensation Committee purportedly granted stock options. Tomasetta and Hovanec inserted these fabricated minutes into the stock option administrator's computer and turned back the clock on the computer thereby creating the

false appearance that the minutes had been written at the same time as when the purported meetings occurred. During an interview of Tomasetta by Vitesse's attorneys, who had begun an internal investigation, Tomasetta admitted to these lawyers that he had told Hovanec and Mody that this conduct "is the Martha Stewart thing, this is dumb, we need to stop - we're going to go to jail."

9. Tomasetta also inserted the dates of these two fictional meetings into his Palm Pilot thereby creating the façade that these two phantom meetings had actually happened. Additionally, on or about December 2005, Hovanec directed his assistant to create a third set of fabricated Compensation Committee meeting minutes to falsely substantiate another backdated grant date from 2003.

10. Based on its conduct, Vitesse engaged in acts, practices and courses of business that violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B), 78n(a)] and Exchange Act Rules 10b-5, 13a-1, 13a-13, 12b-20, and Rule 14a-9 [17 C.F.R. §§ 240.10b-5, 240.13a-1, 240.13a-13, 240.12b-20, 240.14a-9].

11. Based on their conduct, defendants Tomasetta and Hovanec each engaged in acts, practices and courses of business that violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b), 13(b)(5), and 16(a), and of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(b)(5), and 78p(a),] and Exchange Act Rules 10b-5, 13a-14, 13b2-1, 13b2-2, and 16a-3 [17 C.F.R. §§ 240.10b-5, 240.13a-14, 240.13b2-1, 240.13b2-2, and 240.16a-3]. Tomasetta also violated Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 thereunder [17 C.F.R. § 240.14a-9].

12. Based on their misconduct, defendants Mody and Kaplan engaged in acts, practices and courses of business that violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(b)(5)], and Exchange Act Rules 10b-5, 13b2-1, and 13b2-2 [17 C.F.R. §§ 240.10b-5, 240.13b2-1, and 240.13b2-2]. Mody also violated Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14].

13. In addition, Tomasetta, Hovanec, Mody, and Kaplan each aided and abetted Vitesse's violations of Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) [15 U.S.C. §§ 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1 and 13a-13 [17 C.F.R. §§ 240.13b-20, 240.13a-1 and 240.13a-13].

14. Unless enjoined, defendants Vitesse, Tomasetta, Hovanec, Mody and Kaplan are likely to commit such violations in the future. Vitesse, Tomasetta, Hovanec, Mody and Kaplan should be permanently enjoined from doing so. In addition, defendants Tomasetta, Hovanec, Mody and Kaplan should be ordered to disgorge any ill-gotten gains or benefits derived as a result of these violations and prejudgment interest thereon, and be ordered to pay civil monetary penalties. Further, defendants Tomasetta, Hovanec, and Mody respectively should be prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Exchange Act Section 12 [15 U.S.C. § 781] or that is required to file reports pursuant to Exchange Act Section 15(d) [15 U.S.C. § 78o(d)].

JURISDICTION AND VENUE

15. The Court has jurisdiction over this action pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa]. The defendants, directly or indirectly, have made use of the means and instrumentalities of interstate commerce, of the mails, or of the

facilities of a national securities exchange in connection with the acts, transactions, practices and courses of business alleged in this Complaint.

16. Venue is proper pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain of the acts alleged herein constituting violations of the Securities Act and the Exchange Act occurred in this District, including trading in the shares of Vitesse on the Nasdaq National Market and because certain shareholders of Vitesse were located in this District.

DEFENDANTS

17. **Vitesse Semiconductor Corporation** is a major producer of high-performance integrated circuits for use primarily by systems manufacturers in the storage and communications industries. Vitesse was incorporated in Delaware in 1987, is headquartered in Camarillo, California, and maintains a September 30th fiscal year-end. Vitesse's quarters respectively end on December 31st, March 31st, June 30th, and September 30th. During the relevant period, the Company's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and traded on the Nasdaq National Market under the symbol VTSS. The Company's common stock is currently traded on the Pink Sheet System of Quotation under the symbol "VTSS.PK."

18. Vitesse was unable to restate its historical financial statements to reflect the impact of the misconduct described in this Complaint. In September 2008, in its first periodic report filed with the Commission after discovering the fraud, Vitesse filed a Form 10-K for its fiscal years ended September 30, 2006 and 2007. Although its fiscal 2006 financial statements contain one restated quarter (the first quarter of 2006), Vitesse reported that it was unable to restate its financial statements prior to September 30, 2005, or estimate the financial impact of

the improper accounting and sale practices, because it could not rely on poor or non-existent accounting records and because key accounting controls were circumvented by management or did not exist. Vitesse included in this filing a "stock options restatement" ("Stock Options Restatement"), which recorded $268 million of adjustments for unrecorded compensation expenses from the Company's inception in 1987 through 2005. The Company's Form 10-K disclosed that its inability to provide audited financial statements for fiscal years prior to 2006 meant that it was not current in its Exchange Act reporting obligations. As set forth below, Tomasetta, Hovanec, Mody and Kaplan had all ceased working at Vitesse by May 2006.

19. **Louis R. Tomasetta**, age 62, is a resident of Ojai, California. Tomasetta co-founded Vitesse in 1987. From 1987 until May of 2006, Tomasetta served as President, Chief Executive Officer, and as a Director of the Company; Tomasetta took the Company public in December 1991. On May 17, 2006, the Board of Directors of Vitesse terminated Tomasetta because of concerns regarding the integrity of documents evidencing the Company's stock option grant practices. In testimony during the Commission's investigation in this matter, Tomasetta asserted his Fifth Amendment privilege against self-incrimination.

20. **Eugene F. Hovanec**, age 59, is a resident of Westlake Village, California. Hovanec became licensed as a Certified Public Accountant ("CPA") in 1976 in New York. His current license expires in 2011. At Vitesse, from December 1993 through April 2005, Hovanec served as Vice President of Finance and Chief Financial Officer. In April 2005, Hovanec was named Executive Vice President, relinquishing his role as CFO to Yatin Mody. Hovanec served as Executive Vice President until May 17, 2006 when he was terminated by the Board of Directors due to concerns regarding the integrity of documents evidencing the Company's stock

option grant practices. In testimony during the Commission's investigation in this matter, Hovanec asserted his Fifth Amendment privilege against self-incrimination.

21. During his tenure at Vitesse, Hovanec also served from 1994 through 2007 as a director at Interlink Electronics, Inc., a U.S. public company. He served on both Interlink's Audit Committee and Compensation Committee throughout these years. For Interlink's fiscal years 2003 through 2006, Interlink's Board of Directors determined and disclosed that Hovanec was an audit committee financial expert within the meaning of the Commission rule promulgated under Section 407 of the Sarbanes-Oxley Act of 2002, Item 401(h) of Regulation S-K.

22. From 1989 to 1993, Hovanec served as Vice President Finance & Administration, Chief Financial Officer, and Corporate Secretary and Treasurer at publically traded Digital Sound Corporation. Prior to that, from 1984 through 1989, he served as Vice President, Controller and Corporate Controller at Micropolis Corporation, a private company. From 1980 through 1984, Hovanec was a Division Controller at Eocom Electronic Systems, a division of Hoechst Celanese Corporation, and from 1976 through 1980, Hovanec's title was Corporate Special Projects at Hoechst Celanese Corporation, a German public company not listed in the United States. From 1972 until 1976, Hovanec worked as a senior accountant at Arthur Andersen in New York.

23. **Yatin D. Mody**, age 47, is a resident of Westlake Village, California. Mody began work at Vitesse in 1992 and served as Controller from 1993 through November 1998, at which time he was promoted to Vice President and Controller. Mody's job title changed slightly in 2002 to Vice President, Finance and Controller. In April 2005, he was promoted to Chief Financial Officer and thereafter served as Vice President, Finance and Chief Financial Officer. On May 17, 2006, the Board terminated Mody due to concerns regarding the integrity of

documents evidencing the Company's stock option grant practices. Mody is a licensed CPA. He obtained a California CPA license in November 1990; his license is currently inactive and is set to expire on March 31, 2011. Prior to his work at Vitesse, Mody worked as an auditor at Deloitte & Touche.

24. **Nicole R. Kaplan**, age 39, is a resident of Agoura Hills, California. Kaplan began work at Vitesse in 1998 as Manager of Finance, and in 2004 she became Director of Finance. Kaplan obtained a California CPA license in 1996; her license expired in February 2005 and the California Board of Accountancy identifies her license as canceled. Prior to working at Vitesse, Kaplan was employed as an auditor with KPMG LLP for approximately four years. Kaplan was a member of the audit team with the Auditor that conducted the 1995 and 1996 audits of Vitesse's financial statements. In the fall of 2005, Kaplan left Vitesse on maternity leave. Kaplan officially resigned from Vitesse on April 14, 2006.

RELATED ENTITY

25. **Nu Horizons Electronics Corporation ("Nu Horizons")** is a public company incorporated in Delaware and located in New York. Nu Horizons and its subsidiaries are engaged in the distribution of, and provide supply chain services for, high technology electronic components. Since mid-2001, Nu Horizons has been, and continues to be, the exclusive North American distributor for Vitesse products. During the relevant period, the company's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and traded on the Nasdaq National Market under the symbol NUHC.

FACTS

A. IMPROPER REVENUE RECOGNITION

26. Like many semiconductor companies, Vitesse was part of the technology bubble that burst in 2000. Despite reporting over $28 million of net income for fiscal year 2000, Vitesse posted both a loss from operations and a net loss in each fiscal year from 2001 through 2005. The company's losses from operations during this period ranged from approximately $33 million to as much as $167 million. During this time, the amount of revenue Vitesse reported each period became an increasingly important measure of the Company's perceived health. As such, Tomasetta, Hovanec, Mody, and Kaplan orchestrated a multi-year fraudulent scheme to give investors the false impression that Vitesse's revenues were better than they were in reality. From at least September 2001 through April 2006, Tomasetta, Hovanec, Mody and Kaplan engaged in a wide array of fraudulent accounting practices to inflate reported revenue.

1. The Relevant GAAP Revenue Recognition Criteria And Vitesse's Disclosures

27. Under Generally Accepted Accounting Principles ("GAAP"), revenue is generally recognized when it is realized or realizable and earned. Revenue is considered earned when a company has substantially accomplished what it must do to be entitled to the benefits represented by the revenues. These two conditions, realized and earned, are ordinarily met by the time the product is delivered to customers. When a right of return exists, GAAP requires that certain conditions be met before a company can recognize revenue. The required conditions include that the buyer's obligation to pay the seller is not contingent on resale of the product and that a company be able to reasonably forecast the amount of product returns. GAAP presumes that when the return period is long, a company cannot reasonably forecast product returns, and thus revenue recognition is generally precluded. GAAP also presumes that when the product is

susceptible to significant external factors, such as technological obsolescence or changes in demand, a company is unable to forecast product returns, and thus revenue recognition is precluded.

28. In each of its annual reports filed on Forms 10-K up to and including its 2001 Form 10-K, Vitesse disclosed its revenue recognition policy as a policy where "production revenue is recognized when products are shipped to customers, which is when title and risk of loss transfers to the customer." Beginning in 2002, and continuing through 2005, Vitesse disclosed that its "production revenue is recognized when persuasive evidence of an arrangement exists, the sales price is fixed, products are shipped to customers, which is when title and risk of loss transfers to the customer, and collectability is reasonably assured." This language is similar to the language of *Staff Accounting Bulletin* ("SAB") 101, which Vitesse adopted in the fourth quarter of its 2001 fiscal year.

2. Vitesse Improperly Recognized Revenue upon Shipment Of Product to Nu Horizons from 2001 to 2006

29. In August of 2001, Tomasetta and Hovanec, among others, engaged in discussions with Nu Horizons concerning the execution of a product distribution agreement between the two companies. After several weeks of negotiations, Vitesse and Nu Horizons executed an Authorized Preferred Distributor Agreement ("Distribution Agreement"). Under the Distribution Agreement, Vitesse was to ship to Nu Horizons certain product for which Vitesse had already identified customer demand. Vitesse actually shipped, however, whatever product it had manufactured without any consideration for Nu Horizons' existing or forecasted demand. Vitesse, moreover, granted Nu Horizons an unfettered right of return on this inventory. From September 2001 through April 2006, Vitesse routinely used its relationship with Nu Horizons to

wrongly record revenue on such shipments and correspondingly failed to reduce revenue and accounts receivable when product was returned.

30. Vitesse did not disclose in its periodic filings made with the Commission the existence of the Distribution Agreement with Nu Horizons until more than 15 months after the relationship began. In fact, Vitesse did not disclose the distributor relationship with Nu Horizons until December 2002 when it filed its Form 10-K for the fiscal year 2002 with the Commission. The Company's 2002 Form 10-K stated that "certain of the Company's production revenue are made to a major distributor under an agreement allowing for price protection and right of return on products unsold. Accordingly, the Company defers recognition of revenue on such products until the products are sold by the distributor to the end user." This practice was commonly referred to as a "sell-through" model. Similar language appears in each Form 10-K filed by Vitesse with the Commission through December 2005.

31. In or about September 2001, Vitesse management, including Tomasetta and Hovanec, intentionally withheld information about the Distribution Agreement with Nu Horizons from its Auditor. When Vitesse finally disclosed information about the Distributor Agreement in its 2002 Form 10-K, it did so in the form of a misrepresentation. Vitesse falsely informed investors that it "defers recognition of revenue on such products [shipped to the distributor] until such products are sold by the distributor to the end user."

a. The September 2001 Initial Stocking Package

32. The Distribution Agreement with Nu Horizons contained an undisclosed side letter that included purchase orders and unconditional return rights referred to as the initial stocking package ("ISP"). At the beginning of the agreement in 2001, Hovanec suggested to the President of Nu Horizons that the dollar amount of the ISP be approximately $40 million. The

Vitesse side letter explicitly granted Nu Horizons "the right to a one time credit and return for all unsold products against" the ISP. Hovanec knew of the existence of this side letter.

33. Because Nu Horizons had an unconditional right to return all the product from the ISP, the risk of loss on the ISP inventory never passed from Vitesse to Nu Horizons. In fact, Nu Horizons began returning ISP inventory almost as soon as it was received and continued returning product as many as 18 months after shipment. Notably, in February 2002 alone, Nu Horizons returned nearly $8.2 million of ISP inventory to Vitesse.

34. On November 18, 2002, approximately 13 and ½ months after Vitesse had already recognized the ISP revenue, Nu Horizons returned more than $2 million of ISP inventory. Tomasetta personally approved Nu Horizons' return of more than $2 million of ISP inventory in November 2002.

35. At September 30, 2001, Vitesse had already improperly recorded approximately $40 million of revenue from the ISP even though Nu Horizons had sold to end-use customers only $425,000 of ISP inventory. As a result of Vitesse's recognition of the entire ISP as revenue in fiscal year 2001, it had overstated its revenue by approximately $40 million.

36. The ISP transaction represented 10.4% of Vitesse's 2001 reported revenue of $384 million, and 108% of its reported fourth quarter 2001 revenue of $37 million. The additional revenue provided by the ISP also allowed Vitesse to record $34 million in old unrecorded credits in the fourth quarter of 2001. The fraud related to unrecorded credits is fully alleged in ¶¶ 42-46.

b. The 2002 through 2006 Quarterly Stocking Packages With Nu Horizons

37. Near the end of each quarter, beginning on or about December 2002, Vitesse routinely shipped large amounts of inventory to Nu Horizons. As the close of each quarter

approached, Tomasetta and Hovanec directed Vitesse employees to ship product to Nu Horizons in order to close the gap between Tomasetta's internally forecasted revenue target and Vitesse's actual quarterly revenue. During weekly revenue meetings, Tomasetta and Hovanec instructed members of the sales staff to maximize the amount of inventory Vitesse shipped to Nu Horizons. Tomasetta, Hovanec, Mody, Kaplan and others then discussed in smaller, closed-door meetings, specific product shipments to Nu Horizons that would be made in order to close the revenue gap identified by Tomasetta and Hovanec. The defendants sometimes referred to these quarterly shipments as quarterly stocking packages ("QSPs").

38. At the outset of the QSPs, it was common practice to include a side letter that gave Nu Horizon's an "unfettered right" to return all inventory within six months of the date of the QSP.

39. Beginning in 2004, Vitesse and Nu Horizons ceased documenting this return arrangement with side letters. Instead, Vitesse and Nu Horizons relied on "handshake" agreements between Hovanec and a Nu Horizons executive. This change corresponded with Hovanec's increased involvement in the negotiation of the QSPs. Beginning at least as early as 2004, Hovanec made quarterly visits to Nu Horizons in order to negotiate the QSPs, which often occurred in New York City. In total, Vitesse entered into QSPs with Nu Horizons for 15 of 16 quarters between March 2002 and March 2006. A summary of the QSPs appears in the following table.

Month	Vitesse Quarter	Stocking Package Amount	Reported Quarterly Revenue	Stocking Package as % of Reported Revenue	% of Stocking Package Inventory Ultimately Returned to Vitesse
Mar 2002	2Q02	$ 942,464	$42,089,000	2.2%	0%
Mar 2003	2Q03	$ 871,645	$40,172,000	2.2%	0%

Jun 2003	3Q03	$ 6,608,657	$39,738,000	16.6%	10%
Sept 2003	4Q03	$ 3,578,832	$38,249,000	9.4%	5%
Dec 2003	1Q04	$ 7,613,422	$50,312,000	15.1%	12%
Mar 2004	2Q04	$ 9,176,108	$56,034,000	16.4%	12%
Jun 2004	3Q04	$22,503,570	$60,417,000	37.3%	45%
Sep 2004	4Q04	$21,509,965	$52,012,000	41.4%	44%
Dec 2004	1Q05	$16,958,239	$44,459,000	38.1%	25%
Mar 2005	2Q05	$17,075,076	$47,158,000	36.2%	10%
Jun 2005	3Q05	$16,038,692	$50,971,000	31.5%	9%
Sep 2005	4Q05	$17,021,809	$48,190,000	35.3%	12%
Dec 2005	1Q06	$14,487,474	$53,011,000	27.3%	8%
Mar 2006	2Q06	$21,247,217	No filing made	-----	13%

40. The target amount for each QSP was first determined by Hovanec and then discussed with Tomasetta. After that the final dollar amount was communicated to Kaplan who worked on assembling the necessary inventory mix for the QSP to match its dollar amount. Often times, Vitesse, through Hovanec, Kaplan, and top sales managers, pressured Nu Horizons into taking product that it neither wanted nor thought it could sell.

41. Tomasetta, Hovanec, Mody, and Kaplan knew that immediately recognizing revenue from the ISP and the QSPs violated GAAP because of Nu Horizons' unconditional right to return all of the product contained in the ISP and QSPs to Vitesse.

3. Vitesse's Failure to Record Credits for Returned Product

42. From 2001 to 2006, Tomasetta, Hovanec, Mody, and Kaplan routinely instructed sales and finance staff to delay recording credits on returned Vitesse product. Both Tomasetta and Hovanec knew that this delay in timely recording credits would cause revenue to be overstated.

43. Tomasetta instructed the finance staff to take fewer credits each quarter. Both he knew that this practice would result in revenue being inflated. In addition, Tomasetta and Hovanec agreed to "bleed-out" credits over time instead of recording credits in the proper periods. Both Tomasetta and Hovanec knew this violated GAAP.

44. In order for a customer to return product to Vitesse, the Company had to first issue a Return Merchandise Authorization number ("RMA") to the customer. The customer was instructed to use the RMA when shipping product back to Vitesse; the RMA number was used by Vitesse to identify the corresponding customer credit. Vitesse's finance department needed to keep track of the large quantity of returns, but Tomasetta and Hovanec did not want the returns recorded in the Company's general ledger. Outside the Company's normal accounting system, the finance department maintained an Excel spreadsheet of unrecorded credits organized by RMA. Tomasetta, Hovanec, Mody, and Kaplan knew of the existence of the Excel spreadsheet. The Auditor, however, did not have access to this Excel spreadsheet during its audit field work.

45. The balance of unrecorded customer credits was discussed during revenue meetings. Tomasetta and Hovanec did not allow any of the finance staff to record credits in the ordinary course of the Company's business. Instead, the recordation of credits was considered an exceptional event that required approval by Tomasetta, Hovanec or Mody. Tomasetta's message during revenue meetings was to always "avoid taking the negative;" in other words, avoid recording credits in the current quarter and instead push the recording of credits off until a later period.

46. For example, Tomasetta and Hovanec agreed to accept large returns from Nu Horizons on or about September or October 2004. At about that time, Hovanec directed a Vitesse employee to obtain blank RMA forms which later became RMA numbers 10001 and

10002. In the first and second quarters of fiscal year 2005, Nu Horizons returned a total of $21.8 million in product to Vitesse. These returns were authorized by Hovanec on out-of-sequence RMAs numbered 10001, 10002, and 10003. The defendants failed to record these credits in the periods that Nu Horizons returned the product as summarized below.

Quarter	RMA 10001		RMA 10002		RMA 10003	
	Amount Returned	Amount Credited	Amount Returned	Amount Credited	Amount Returned	Amount Credited
1Q05	$5,000,000	$2,940,000	$7,000,000			
2Q05		$668,917		$2,013,043	$11,800,000	$399,462
3Q05		$1,187,800		$732,830		
4Q05		$12,015		$192,701		$50,833
1Q06						$811,417
2Q06				$283,640		$114,974
3Q06				$2,461,256		$5,602,435
Total	$5,000,000	$4,808,732	$7,000,000	$5,683,470	$11,800,000	$6,979,121

After the defendants were either terminated or had resigned by May 2006, Vitesse's new management directed that all previously unrecorded credits be recorded, including the credits above in 3Q06. The Company's failure to timely record these credits resulted in a material overstatement of revenue and accounts receivable in the corresponding periods.

4. Vitesse Misapplied Cash Receipts to Hide the Age of Its Invalid Accounts Receivable

47. As a result of its failure to timely record customer credits, Vitesse's accounts receivable balances grew and aged. In order for Vitesse to hide its improper revenue recognition practices related to the ISP and QSPs from its Auditor, Vitesse needed cash to conceal the true age of its old accounts receivable balances.

48. In order to conceal the aged balances of Nu Horizons' invalid accounts receivable from the Auditor during its field work, Hovanec and Kaplan routinely instructed lower-level finance employees to improperly post cash receipts from other customers to the oldest of Nu Horizons' accounts receivable. After the Auditor's field work was completed, Kaplan instructed

the lower-level finance staff to reverse these entries and apply the cash to the proper customers' accounts receivable balances. Both Hovanec and Kaplan knew this violated GAAP.

49. This practice of misapplying cash receipts grew dramatically in scale when, in later periods, Hovanec solicited large cash payments from Nu Horizons at quarter-end. As part of his quarter-end trips to negotiate the QSPs, Hovanec also requested large cash pre-payments from Nu Horizons.

50. At times, the cash prepayment solicited by Hovanec was equal to or greater than the simultaneously negotiated QSP. For example, in Vitesse's second quarter of 2003, Nu Horizons made a $7 million prepayment to Vitesse at the same time it provided an $871,000 QSP to Nu Horizons. The prepayments from Nu Horizons continued for each of Vitesse's quarters from March 2003 through March 2006. The prepayments ranged from a low of $2 million to a high of $16 million. The prepayments ranged from 11.8% to 803% of the dollar amount of the QSPs. The average dollar amount of the quarterly lump sum cash payments was over $7 million.

51. Upon his return from Nu Horizons, Hovanec, and at times Kaplan, instructed the lower-level finance staff to post the cash payment to the oldest and largest of Nu Horizons' outstanding invoices. After completion of the Auditor's field work, the lower-level finance staff was instructed to reverse the entries.

52. As a result of the numerous discounts, returns, and side deals between Vitesse and Nu Horizons, the amounts due to Vitesse from Nu Horizons were difficult to reconcile. For example, on September 15, 2005, at the request of the Auditor, Vitesse sent four letters to Nu Horizons asking it to confirm that 39 specific invoices listed as outstanding in Vitesse's records were, in fact, outstanding. The 39 invoices totaled more than $7.6 million and were dated

between February 2005 and September 2005. Nu Horizons' records, however, indicated that all 39 invoices were no longer outstanding.

53. In September or October 2005, Nu Horizons told Kaplan in a phone conversation that it would not confirm these invoices as outstanding because they were indeed not outstanding. At Kaplan's request, however, Nu Horizons agreed not to return the confirmation letters to the Auditor. In its 2005 Form 10-K, Vitesse reported $30.4 million of accounts receivable at September 30, 2005. The $7.6 million of the Nu Horizons invoices represent more than 25% of Vitesse's reported accounts receivable balance.

B. THE FRAUDULENT MANIPULATION OF STOCK OPTION GRANT DATES

1. The Relevant Vitesse Stock Option Plans and Disclosures

54. Vitesse regularly granted stock options to employees, including officers, under three shareholder approved plans, the 1989 Stock Option Plan, the 1991 Stock Option Plan and the 2001 Stock Incentive Plan (collectively, the "Option Plans"), which were generally effective in consecutive 10 year periods. With the exception of non-statutory options granted under the 2001 and 1989 Plans, these plans required that Vitesse grant all options with exercise prices at no less than 100% of the fair market value of the Company's stock on the "date of grant," which the 1991 and 2001 plans define as "the date on which the Administrator makes the determination granting such Option, or such other later date as is determined by the Administrator." The 1989 Plan provides that the "date of grant" is "the date on which the Board makes the determination granting such Option." For non-statutory options awarded under the 2001 Plan, the plan provided that the exercise price is determined by the plan's Administrator, which was in practice the Compensation Committee of Vitesse's Board of Directors. For non-statutory options

awarded under the 1989 Plan, the plan provided that the exercise price could not be less than 85% of the fair market value of the stock on the date of grant.

55. Vitesse disclosed in every annual report on Form 10-K for its fiscal years 1996 through 2005 that under the Option Plans the exercise price of all stock options must be at least equal to the fair market value of Vitesse's common stock on the date of grant. Thus, Vitesse consistently disclosed to investors that the Option Plans prohibited the grant of in-the-money options.

56. Additionally, Vitesse's annual reports on Form 10-K for its fiscal years ended September 30, 2002 through September 30, 2005 affirmatively stated, in substantially similar terms that, other than certain grants made in connection with certain companies Vitesse acquired, all option grants made by Vitesse to employees were granted at the fair market value at the time of grant. Vitesse's quarterly reports on Form 10-Q filed from May 2004 to February 2006 similarly stated that the Company did not grant in-the-money options.

2. Accounting for Employee Stock Options and Vitesse's Disclosures

57. During the period described herein, GAAP, and in particular Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* ("APB 25"), did not require a company to record any compensation expense for employee stock options so long as the option exercise price was set: at the quoted market price of the company's stock on the date of the grant (i.e., an "at-the-money" option), or above the quoted market price of the company's stock on the date of the grant (i.e., an "out-of-the-money" option).

58. Under APB 25, an employee option granted with an exercise price lower than the quoted market price of the company's stock on the date of grant (i.e., an "in-the-money" option) has "intrinsic value." The "intrinsic value" of a fixed stock option is the difference between the

exercise price and the quoted market price of the company's stock on the date of grant or the "measurement date." During the period described herein, employers were required to record as an expense on their financial statements the "intrinsic value" of a fixed stock option on its "measurement date." The measurement date, as defined by APB 25, is the first date on which the following information is known: (i) the number of options that an individual is entitled to receive, and (ii) the exercise price. Under APB 25, the intrinsic value of a fixed stock option must be recognized over the vesting period of the option. Options that are at-the-money or out-of-the-money on their grant or measurement date have no intrinsic value and therefore need not be expensed.

59. Beginning on December 15, 1998 and continuing through the period described herein, FASB Interpretation No. 44, *Accounting for Certain Transactions Involving Stock Compensation, an Interpretation of APB Opinion No. 25* ("FIN 44"), required the application of variable accounting under APB 25 when an employee's stock option is repriced unless a six-month waiting period requirement is met. Variable accounting requires that compensation expenses be adjusted from period to period, based on variations in the market price of the company's stock as compared to the exercise price of the option grant.

60. Vitesse's Forms 10-K for fiscal years ended September 30, 1996 through September 30, 2005 stated that the Company prepared its financial statements in accordance with GAAP, and that Vitesse accounted for stock option grants in accordance with APB 25. Vitesse also disclosed in its Forms 10-K for fiscal years 2000 through 2005 that it complied with FIN 44. Vitesse's Forms 10-Q filed from May 2003 to February 2006 also state that the Company applied, or accounted for stock option grants in accordance with, APB 25.

3. The Stock Option Granting Process at Vitesse

61. Vitesse regularly granted options to employees and officers at the time they were hired and on an annual ("evergreen") basis. Vitesse periodically granted other types of options as well, such as performance and retention awards. Vitesse's Compensation Committee comprised of independent directors approved all option grants that Vitesse awarded. The Committee typically granted options at in-person meetings following regularly scheduled Board meetings, and at times granted options during telephonic meetings or by unanimous written consent.

62. Tomasetta approved all grant proposals before he recommended them to the Compensation Committee. After Tomasetta approved the proposed recipients and number of options, Tomasetta, Hovanec and Mody's administrative assistant -- who also served as the Company's de facto stock option administrator (the "Assistant") -- typically provided a schedule of these options to the Compensation Committee in advance of the Committee's meetings. Schedules provided to the Committee generally did not include a recommend date or exercise price, though proposals for new hires at times identified the employees start date as the intended grant date.

63. Tomasetta and Hovanec attended Compensation Committee meetings and presented the option proposals to the Committee, and the Committee typically considered and approved grants in their presence without modification. Vitesse's Compensation Committee did not discuss option exercise prices. Compensation Committee members intended and believed that, with the exception of new hire grants, the grant dates for all options they approved were the dates of the meetings where they approved the options, and that the exercise price of the options would be the close of Vitesse's stock on the approval dates. For new hires, Compensation

Committee members believed that the exercise price was set at the closing price of the Company's stock on either the date of the Committee's approval or the employee's start date.

64. Sometime after the Committee approved a set of grants, the Assistant entered the options into the Company's electronic stock options database (Equity Edge) based on the approved option grant schedule (which included optionee names and option numbers), and a grant date and exercise price provided by Tomasetta or Hovanec. These lists at times included options and recipients that Tomasetta had authorized but that the Committee had not previously granted. The Assistant then printed a "Notice of Stock Options and Option Agreement" ("Grant Notices") for each individual grant, and asked Hovanec or Tomasetta to sign them on behalf of Vitesse. After the Grant Notices were signed, the Assistant forwarded them to Company supervisors to distribute to employees.

4. The Stock Option Backdating Scheme

65. Between 1995 and 2005, Tomasetta and Hovanec regularly disregarded the dates the Compensation Committee approved stock option grants and routinely used hindsight to select grant dates based on low points in the price of Vitesse's stock. At times, Tomasetta and Hovanec sought the Assistant's support in identifying low prices, such as by directing the Assistant to print a list or chart of Vitesse's stock prices covering a one to three month period. Tomasetta or Hovanec would then choose a low price or ask the Assistant to identify the low price.

66. Selection of favorable exercise prices occurred at different times relative to the Compensation Committee's approval of the grant. In some cases, Tomasetta and/or Hovanec chose a favorable price by looking back days, weeks or months at or around the date of the Committee's approval. At other times, they waited to see if the stock price would decline further

after the Committee's approval before retroactively selecting the price. In still other instances, when Vitesse's stock price continued to decline in the weeks or months after Tomasetta and/or Hovanec had selected a price, they used hindsight to regrant or "reprice" the options. Certain options were repriced multiple times, with Tomasetta and/or Hovanec using hindsight to select each new price.

67. Through the backdating, Tomasetta and Hovanec caused Vitesse to falsify its books and records to reflect the chosen date as the purported grant date instead of the date the options were actually approved by the Compensation Committee. After Tomasetta and/or Hovanec chose a low price for the options, they instructed the Assistant to record the price and corresponding "grant date" in Equity Edge. In connection with some of the grants that Tomasetta and/or Hovanec repriced, Tomasetta and/or Hovanec at times instructed the Assistant to delete the original grant date entries from Equity Edge and to shred all documents associated with the original grants. They also instructed the Assistant to record the selected price and "grant date" in the Compensation Committee meeting minutes that the Assistant prepared from Hovanec's handwritten notes. Hovanec signed the final version of the Compensation Committee minutes as Secretary for each meeting.

68. For approximately fifteen of the backdated options, the Committee minutes are backdated or misdated on their face, meaning that the correct meeting date is included in the title and first paragraph, but later in the text or on the attached schedules the minutes disclose the false grant date that Tomasetta and/or Hovanec had selected. In addition, the Grant Notices given to employees reflect the chosen date and price as the grant date and exercise price for the options.

69. As a result of Tomasetta and Hovanec's actions, Vitesse backdated the grant dates for at least 40 option grants during 1995 through 2005. Nearly every annual evergreen grant to the Company's employees and officers was backdated. Grants to new hires were backdated, on occasion, to dates before Vitesse had even hired the employee. One-off grants to employees were also backdated. In total, and as set forth in the charts below, Vitesse backdated or repriced a total of 6,953 individual option grants with 43 fraudulent grant dates covering approximately 49 million options.

70. In the charts below, the "Revised Grant Date" represents the revised measurement date that Vitesse recorded in its Stock Options Restatement.

Backdated Evergreen Grants

Purported Grant Date	Revised Grant Date	Exercise Price	Exercise Price on Revised Grant Date	Difference in Share Price	Total Shares Granted
1/27/1995	4/19/1995	$4.50	$4.56	$0.06	400,500
1/23/1996	9/17/1996	$11.25	$41.12	$29.87	275,000
3/19/1997	4/15/1997	$22.50	$30.50	$8.00	913,700
1/1/1998	4/21/1998	$37.75	$56.63	$18.88	1,280,600
10/5/1998	1/26/1999	$18.06	$48.75	$30.69	2,112,050
4/6/2001	7/12/2001	$17.44	$18.85	$1.41	5,668,900
10/2/2001	1/29/2002	$7.27	$12.46	$5.19	6,952,450
12/17/2003	4/17/2004	$5.69	$5.77	$0.08	4,204,500
10/20/2003	10/16/03; repriced on 1/26/2004	$6.97	$7.32 repriced $8.74	$0.35 $1.77	1,600,000
10/27/2004	1/24/2005	$2.58	$3.18	$0.60	10,821,100
Total					34,228,800

Backdated New Hire Grants

Purported Grant Date	Revised Grant Date	Exercise Price	Exercise Price on Revised Grant Date	Difference in Share Price	Total Shares Granted
2/24/1997	4/15/1997	$28.91	$30.50	$1.59	96,750
3/31/1997	4/15/1997	$27.62	$30.50	$2.88	12,500
4/21/1997	7/19/1997	$27.75	$41.00	$13.25	4,000

10/5/1998	10/17/1998	$18.06	$28.44	$10.38	18,500
10/1/1998	1/26/1999	$20.44	$48.75	$28.31	12,500
11/2/1998		$33.00	$48.75	$15.75	111,000
12/1/1998		$35.75	$48.75	$13.00	11,000
1/4/1999		$44.31	$48.75	$4.44	135,500
4/24/2000	4/18/2000 repriced on 7/18/2000	$50.63	$62.56 repriced $73.56	$11.93 $22.93	125,200
4/24/2000	7/18/2000	$50.63	$73.56	$22.93	28,200
5/10/2000	7/18/2000	$45.75	$73.56	$27.81	74,100
	9/21/2000		$86.00	$40.25	10,000
5/23/2000	7/18/2000	$41.38	$73.56	$32.18	25,000
6/1/2000	7/18/2000	$56.50	$73.56	$17.06	28,300
	9/21/2000		$86.00	$29.50	300,000
6/30/2000	7/18/2000	$73.56	$73.56	$0.00	61,500
7/5/2000	7/18/2000	$69.25	$73.56	$4.31	27,700
	9/21/2000		$86.00	$16.75	3,100
7/28/2000	9/21/2000	$56.56	$86.00	$29.44	300
7/5/2000	9/21/2000	$69.25	$86.00	$16.75	100
7/28/2000		$56.56	$86.00	$29.44	21,100
8/3/2000		$54.81	$86.00	$31.19	152,400
8/16/2000		$77.94	$86.00	$8.06	25,600
9/12/2000		$78.75	$86.00	$7.25	43,600
9/18/2000		$80.19	$86.00	$5.81	14,000
2/13/2001	7/12/2001	$20.00	$18.85	($1.15)	39,088
4/6/2001	1/23/2001 repriced on 4/12/2001	$17.44	$75.88 repriced $25.70	$58.44 $8.26	134,200
4/6/2001	4/12/2001	$17.44	$25.70	$8.26	560,150
7/10/2001	7/12/2001	$15.78	$18.85	$3.07	589,700
10/2/2001	9/20/2001 repriced on 10/25/2001	$7.27	$8.92 repriced $11.35	$1.65 $4.08	311,700
	10/25/2001	$7.27	$11.35	$4.08	183,300
10/30/2001	1/29/2002	$8.84	$12.46	$3.62	2,000
11/2/2001	1/29/2002	$9.98	$12.46	$2.48	90,900
12/3/2001	1/29/2002	$11.11	$12.46	$1.35	168,400
1/23/2002	1/29/2002	$11.62	$12.46	$0.84	93,900
	4/18/2002	$11.62	$7.94	($3.68)	38,200
5/6/2002	4/18/2002 repriced on 7/18/2002	$4.62	$7.94 repriced $3.18	$3.32 ($1.44)	219,500
8/15/2002	7/18/2002 repriced on 9/19/2002	$1.26	$3.18 repriced $0.99	$1.92 ($0.27)	178,800
Total					3,951,788

Backdated Other Grants

Purported Grant Date	Revised Grant Date	Exercise Price	Exercise Price on Revised Grant Date	Difference in Share Price	Total Shares Granted
9/13/1995	9/14/1995	$10.75	$11.25	$0.50	75,000
3/19/1997	4/15/1997	$22.50	$30.50	$8.00	136,500
1/1/1998	4/21/1998	$37.75	$56.62	$18.87	2,000
5/14/1998	7/14/1998	$26.75	$33.75	$7.00	6,000
10/5/1998	1/26/1999	$18.06	$48.75	$30.69	40,000
1/1/1999	7/20/1999	$45.63	$59.25	$13.62	1,000
5/24/1999		$52.63	$59.25	$6.62	139,000
1/26/2000	4/18/2000	$46.63	$62.56	$15.93	19,100
4/24/2000	7/18/2000	$50.63	$73.56	$22.93	34,000
9/18/2000	9/21/2000	$80.19	$86.00	$5.81	1,500
4/6/2001	7/12/2001	$17.44	$18.85	$1.41	1,273,644
7/10/2001	7/12/2001	$15.78	$18.85	$3.07	609,591
	10/25/2001	$7.27	$11.35	$4.08	230,876
10/2/2001	1/29/2002	$7.27	$12.46	$5.19	7,438,741
	4/18/2002	$7.27	$7.94	$0.67	195,000
10/30/2001	1/29/2002	$8.84	$12.46	$3.62	2,950
11/2/2001	1/29/2002	$9.98	$12.46	$2.48	5,350
12/3/2001	1/29/2002	$11.11	$12.46	$1.35	3,500
1/23/2002	1/29/2002	$11.62	$12.46	$0.84	6,350
4/22/2002	4/18/2002 repriced on 7/18/2002	$7.36	$7.94 repriced $3.18	$0.58 ($4.18)	125
5/6/2002	4/18/2002 repriced on 7/18/2002	$4.62	$7.94 repriced $3.18	$3.32 ($1.44)	24,400
8/15/2002	7/18/2002 repriced on 9/19/2002	$1.26	$3.18 repriced $0.99	$1.92 ($0.27)	7,475
4/1/2003	4/17/2003	$2.18	$2.40	$0.22	15,000
12/17/2003	4/17/2004	$5.69	$5.77	$0.08	72,500

10/27/2004	1/24/2005	$2.58	$3.18	$0.60	226,000
Total					10,565,602

71. Vitesse, through the knowing or reckless actions of Tomasetta and Hovanec, failed to record compensation expense for any of these options in the financial statements it filed with the Commission in annual, quarterly, and other reports during the fiscal years ended September 30, 1996 through the first quarter of 2006, which ended December 31, 2005. These unrecorded expenses, which are contained within the Stock Options Restatement included in Vitesse's Form 10-K filed in September 2008, overstated Vitesse's annual pretax income or understated it annual pretax loss by between approximately 1.7% and 45.7% during the fiscal years 1996 to 2005, as identified in the chart below.

Fiscal Year	Approximate Unrecorded Stock Comp Expense	Previously Reported Pretax Income (Loss)	Approximate Unrecorded Stock Comp as % of Pretax Results
1996	$ 233,791	$ 14,050,000	1.7 %
1997	$ 4,708,512	$ 36,540,000	12.9 %
1998	$ 7,349,285	$ 65,951,000	11.1 %
1999	$ 23,393,202	$103,890,000	22.5 %
2000	$ 22,489,536	$ 81,678,000	27.5 %
2001	$ 28,723,399	($159,062,000)	18.1 %
2002	$ 46,047,137	($823,719,000)	5.6 %
2003	$ 24,625,010	($131,179,000)	18.8 %
2004	$ 15,362,456	($ 33,613,000)	45.7 %
2005	$ 11,293,558	($126,811,000)	8.9 %
Total	$184,225,887	--	--

5. Tomasetta and Hovanec Knew or Recklessly Disregarded The Pricing Requirements of the Option Plans and the Applicable Stock Option Accounting Rules

72. Tomasetta and Hovanec knew or were reckless in not knowing that Vitesse's shareholder-approved Option Plans prevented in-the-money grants for most options during the period from 1995 to 2005. Tomasetta reviewed, signed, and in certain years certified Vitesse's

fiscal 1996 - 2005 Forms 10-K, and Hovanec reviewed, signed, and in certain years certified Vitesse's 1996 – 2004 Forms 10-K, containing the above identified disclosures that the Option Plans prohibited the grant of in-the-money options and/or that all option grants made by Vitesse to employees were granted at the fair market value at the time of grant. Tomasetta also reviewed and certified the above identified Forms 10-Q filed from May 2004 to February 2006 that stated Vitesse did not grant in-the-money options, and Hovanec reviewed, signed, and certified the Forms 10-Q filed from May 2004 to February 2005.

73. In addition, during their attempt to cover-up certain of their stock option backdating misconduct during late 2005 to April 2006 following media inquiries of possible backdating at the Company (discussed below in ¶¶ 112-118), they told Vitesse directors in early 2006 that the Company historically priced options at the market value of the stock on the date the Compensation Committee approved the grants.

74. Tomasetta and Hovanec also knew or recklessly disregarded the accounting rules governing in-the-money and repriced option grants. Both of them reviewed, signed, and in certain years certified the above identified Forms 10-K that stated Vitesse prepared its financial statements in accordance with GAAP and accounted for stock option grants in accordance with APB 25 and FIN 44. They also reviewed, signed, and certified various Vitesse Forms 10-Q filed from May 2003 through fiscal 2005 that contain similar disclosures. Further, they reviewed and signed various management representation letters provided to the Company's Auditor (identified below in ¶¶ 156-158) that stated that stock option grants were accounted for in accordance with APB 25.

75. Hovanec, as a Certified Public Accountant, was trained in accounting, worked as an auditor for five years (1972 to 1976) at Arthur Andersen rising to the level of senior accountant, and served in various accounting positions at other public companies.

76. Tomasetta and Hovanec knew the accounting ramifications of granting in-the-money options at least as early as April 1999. In mid-1999 Vitesse acquired a software company called XaQti. To induce XaQti to agree to the acquisition, Tomasetta and Hovanec agreed to grant in-the-money options to certain XaQti employees after they joined Vitesse. In connection with these grants, Mody explained to Tomasetta and Hovanec that when the exercise price of an option is less than the fair market value of the underlying stock on the date of grant, a registrant must expense the difference between the exercise price and the grant date fair market value. Mody informed Tomasetta and Hovanec that Vitesse would have to expense the in-the-money portion of the options (approximately $5 million) over the life of the options, as long as the employees remained with Vitesse. Consistent with Mody's statements, Vitesse recorded compensation expense for these options in its Forms 10-K for the fiscal years 2000 through 2002, which Tomasetta and Hovanec reviewed and signed.

77. In addition, in late 2005 during Tomasetta's and Hovanec's attempt to cover-up certain of their backdating, the law firm that served as Vitesse's long-time outside counsel ("Outside Counsel") reminded Tomasetta and Hovanec about the accounting ramifications of granting in-the-money options. In this same period, Mody also represented to the Audit Committee of Vitesse's Board of Directors and Vitesse's Auditor, at an Audit Committee meeting which Tomasetta and Hovanec attended, that Vitesse had properly accounted for prior option grants in accordance with APB 25. Days later, Vitesse filed its 2005 10-K that Tomasetta

reviewed, signed, and certified, but which failed to record compensation expenses generated by Tomasetta and Hovanec's backdating.

78. By at least July 2002, Tomasetta and Hovanec also knew of the accounting and disclosure requirements for repriced options. Around this time underwater options were depressing morale at Vitesse and the Company sought advice from its Outside Counsel about how to reestablish the value of these options. Outside Counsel advised Vitesse management, including through slides sent to Hovanec that Outside Counsel prepared for a Board presentation, and via conference calls with Hovanec, that if Vitesse repriced existing options then the revised options would be subject to variable accounting. Reissuing new options six months and one day after the originals had been canceled, however, would not require such accounting. Outside Counsel further explained that shareholders disfavor repricings because they incur real losses when the price of their own stock declines but receive no special treatment, and further that repriced grants to named executives in the Company's proxy statements must be disclosed.

79. This information was communicated to Tomasetta and both he and Hovanec explained to Vitesse's board of directors the consequences of repricing or canceling options. Also, at a July 18, 2002 Compensation Committee meeting that Outside Counsel participated in by phone, Tomasetta discussed with the Committee two different proposals for dealing with underwater options. Vitesse ultimately disclosed in its 2002 proxy statement that the Committee had declined to cancel underwater options previously granted to Tomasetta and other executives, and reissue new ones, because the new options would be subject to variable accounting. This decision was made jointly with Tomasetta and Hovanec.

5. Examples of Tomasetta's and Hovanec's Options Backdating

a. July 10, 2001 New Hire and Other Grants

80. Vitesse's July 10, 2001 grant of 1,199,291 options to 141 new hires and certain current employees was backdated by two days. On July 12, 2001, Tomasetta and Hovanec attended a Compensation Committee meeting where the Committee approved the options. The stock closed that day at $18.85. On or about this date, Hovanec looked back to select a low price for the options. A stock price chart from the Assistant's files dated July 11, 2001 lists Vitesse's stock price from June 15 to July 11. The price next to the July 10 date, which is the lowest price on the chart, is circled and next to it Hovanec wrote, "[Assistant] stock price Gene." The Compensation Committee meeting minutes documenting this grant are backdated, stating that the exercise price shall be 100% of the fair market value of the stock on July 10, 2001.

81. Based on the closing price of Vitesse's stock on July 10 ($15.78), these options were in-the-money on a per share basis by $3.07, and in the aggregate by approximately $3.7 million. Hovanec signed the meeting minutes documenting the grant, and towards the end of July through September, both he and Tomasetta signed the corresponding Grant Notices which contained the false grant date. In its Stock Options Restatement, Vitesse revised the measurement date for these options to July 12, 2001.

b. May 6, 2002 New Hire and Other Options

82. Vitesse's May 6, 2002 grant of 244,025 options to 50 new hires and certain current employees was backdated and then repriced as Vitesse's stock price declined. On April 18, 2002, Tomasetta and Hovanec attended a Compensation Committee meeting where the Committee granted the options. In the following weeks, Tomasetta and Hovanec twice manipulated the grant date for these options

83. Hovanec first selected April 22, 2002 as the grant date. On a stock price chart listing Vitesse's stock prices from January 30 to April 18, the Assistant wrote, "Gene, Hire dates (highlighted) for new grants. Last qtr we used the low in each month. [Assistant]". Hovanec responded by writing on the chart, "do them as of today Gene 4/22/02 hire date vest", meaning that the Assistant should record April 22 as the grant date but use the employees' hire date to commence the options' vesting period. The closing price of Vitesse's stock on April 22 was the second to lowest closing price of the Company's stock between January 30 and April 22.

84. Hovanec and Tomasetta thereafter selected a new grant date with a lower price. In an email chain between the Assistant and a vice president in Vitesse's European operations, dated between May 8 and May 10, 2002, the Assistant stated:

> The whole group of new hire grants approved at the April 18 Board of Directors meeting were given a grant date of April 22, option price $7.36. Then, when the stock price began to fall, Gene Hovanec suggested I wait a week or two before we finalized everything to send to employees. We talked about it again yesterday and decided to discuss with Lou on Friday (he's traveling Wed & Thur) to make sure we are going to go ahead with the April 22 grant date & price.

85. Tomasetta ultimately instructed the Assistant to change the grant date from April 22 to May 6. On a stock price chart listing Vitesse's stock price from April 18 to May 8, 2002, the Assistant wrote, "New hires Feb, March, April change to," followed by an arrow pointing to the date 5/6/02 and the price $4.62. This date and price are circled, and the Assistant wrote, "per Lou on 5-10-02(.)" The closing price of Vitesse's stock on May 6 was the lowest closing price of the Company's stock between January 30 and May 10. Based on the closing price on May 6, the exercise price for these options was $3.32 per share ($809,748 in the aggregate) lower than the closing price of Vitesse's stock on April 18, when the options were actually approved.

86. On or about May 13, 2002, Hovanec signed the Grant Notices for these grants which contained the false May 6 grant date.

87. The minutes documenting the Compensation Committee's April 18 meeting are backdated and state that the exercise price for the options shall be 100% of the fair market value of the stock on May 6. Hovanec signed the minutes.

88. In its Stock Options Restatement, Vitesse concluded that these options were first granted on April 18, 2002 and then repriced on July 18, 2002, the date of the next board meeting when the Compensation Committee minutes were final and signed. As a result of the repricing, Vitesse applied variable accounting to the options, recording approximately $89,869 in compensation expense.

c. October 2, 2001 Fiscal 2002 Officer/Employee Evergreen Options

89. Tomasetta and Hovanec manipulated Vitesse's October 2, 2001 grant of approximately 6.9 million evergreen options to 1,057 employees and various officers on three separate occasions, backdating the final grant by approximately four months. In the first instance, it appears that at the July 12, 2001 Compensation Committee meeting, which Tomasetta and Hovanec attended, the Committee considered a preliminary total evergreen option number. At that meeting the Committee was not provided with any option grant schedules containing specific proposals for identified employees, and it did not approve the fiscal year 2002 evergreens at that time. The Assistant's handwritten notes on a summary sheet of grants to be considered at the meeting state "grant date TBD" for the employee evergreens and certain other options, and the minutes of the July 12 meeting make no mention of the evergreens. Nevertheless, at Tomasetta's or Hovanec's direction, and using the same July 10, 2001 backdated grant date that Hovanec had selected for the new hire and other options that were

actually granted at this meeting (discussed above), the Assistant recorded a grant date and exercise price of July 10, 2001 and $15.78 in various Company records for these evergreen options.

90. As the Company's stock price declined, Tomasetta and/or Hovanec instructed the Assistant to change the grant date to August 21, 2001 and a price of $13.23. The Assistant typed draft minutes of a purported August 21 telephonic meeting of the Compensation Committee where the Committee allegedly granted the evergreens. In fact, no such meeting occurred, and these minutes were never signed. The Assistant ultimately deleted the August 21 date and the corresponding price from Equity Edge at Tomasetta's and/or Hovanec's direction.

91. Tomasetta and/or Hovanec instructed the Assistant to change the grant date and exercise price for the options for a third and final time to October 2, 2001 and $7.27. This grant is identified in minutes of a meeting of the Compensation Committee held on October 25, 2001, which Tomasetta and Hovanec attended. The minutes are backdated and state that the exercise price of the options shall be 100% of the fair market value of the stock on October 2, 2001. Vitesse's Compensation Committee, however, did not meet on October 2, 2001 or otherwise take any actions to grant the options on this date.

92. The October 2 "grant" was not finalized until four months after the purported grant date, as evidenced by various documents and Tomasetta and Hovanec's approval. The Assistant included a draft of the October 25 Committee minutes in the board book for the next board meeting, which occurred on January 29, 2002; the draft contains total evergreen options that differ slightly from the final version of the minutes that Hovanec signed on or after that date. In a January 30, 2002 inter-office memo, the vice president of Vitesse's Human Resources department ("HR Department") distributed "this year's final approved evergreen stock option

list" to various supervisors noting the October 2 "grant date" and price, and informing them that they "can now advise your employees" of the grant and that the Assistant will distribute the option paperwork in the next 60 days. A chart the Assistant prepared after the January 29 Compensation Committee meeting identifies the type, vesting periods, and backdated grant dates for both options the Committee approved on January 29 as well as for the fiscal year 2002 evergreen and certain other options. For the evergreen and certain other options the chart states, "Grant date is 10/2/01." The Assistant wrote on the chart, "OK'd by Lou & Gene 2-11-02." Finally, in March 2002 Hovanec and Tomasetta signed the Grant Notices for the evergreen options which the Assistant then distributed to employees.

93. The closing price of Vitesse's stock on October 2 was the second to lowest closing price of the Company's stock between July 2001 and January 29, 2002; Vitesse's stock closed just $0.24 lower on September 27.

94. In its Stock Options Restatement, Vitesse revised the measurement date for these options to January 29, 2002. Based on the closing price of the stock on this date ($12.46), the options were in-the-money by $5.19 per share, or approximately $36 million in the aggregate. Tomasetta's 1.2 million options were in-the-money by approximately $6.2 million and Hovanec's 300,000 options were in-the-money by $1.5 million.

95. In addition, as alleged below, during November 2005 – April 2006, faced with media inquiries concerning possible backdating at Vitesse, Tomasetta and Hovanec attempted to cover up the fact that they had backdated the fiscal year 2002 evergreen grants. Tomasetta and Hovanec fabricated board of director minutes that falsely documented a telephonic meeting of the Compensation Committee on October 2, 2001, which never occurred. Tomasetta also inserted an entry for an October 2, 2001 meeting into his Palm Pilot.

d. March 19, 1997 Fiscal 1997 Officer/Employee Evergreen Options

96. Tomasetta and/or Hovanec backdated Vitesse's fiscal year 1997 officer and employee evergreen grant from April 15, 1997 to March 19, 1997. This grant included approximately 913,700 options awarded to 216 employees and officers.

97. Tomasetta and Hovanec attended a meeting of Vitesse's Compensation Committee on April 15, 1997 at which time the Committee approved a nearly final list for the fiscal year 1997 evergreen options for officers and employees. The board book for Vitesse's next quarterly board meeting, which occurred on July 15, 1997, which Tomasetta and Hovanec also attended, includes an unsigned draft of the April 15, 1997 Compensation Committee meeting minutes. This draft states that on April 15th, "Dr. Tomasetta reviewed the process used to determine additional stock option awards to current employees based on current performance and long-term contribution to the Corporation." The draft further states that the Committee approved the employee and officer evergreens on April 15th, and that in accordance with the terms of the company's option plans, the exercise price for these options is "the closing price of the company's stock on the date of the Compensation Committee meeting."

98. The signed version of the April 15, 1997 Compensation Committee meeting minutes, however, discloses an exercise price that is different from the exercise price disclosed in the unsigned version of the minutes included in the July 15th Board book. These signed minutes state that the exercise price for the options granted at the meeting is the closing price of the company's stock on "the date of the telephonic meeting of the Compensation Committee, March 19, 1997." Vitesse's Compensation Committee, however, did not approve the fiscal year 1997 evergreen options at a telephonic meeting on March 19, 1997.

99. Moreover, Vitesse's Compensation Committee did not even approve the final version of the officer evergreens until after April 15, 1997. On April 22, 1997, Tomasetta submitted a final proposal for the officer evergreens to the then Chair of the Compensation Committee. In that proposal, Tomasetta noted that one of the other directors suggested increasing Tomasetta's evergreen grant by an additional 50,000 options.

100. The closing price of Vitesse's stock on March 19, 1997 was $22.50, which was the lowest closing price of the Company's stock during all of 1997. In its Stock Options Restatement, Vitesse revised the measurement date for these evergreen options to April 15, 1997. Based on the closing price of Vitesse's stock on this date ($30.50), these options were in-the-money on a per share basis by $8, and in the aggregate by approximately $7,309,600. Tomasetta's 600,0000 options (split-adjusted) were in-the-money by approximately $1.2 million, and Hovanec's 120,000 options (split-adjusted) were in-the-money by approximately $240,000.

101. Hovanec signed the April 15, 1997 Compensation Committee meeting minutes, Tomasetta signed Hovanec's corresponding stock option Grant Notice, and Hovanec signed the remaining stock option Grant Notices to employees and officers.

e. August 15, 2002 New Hire and Other Grants

102. On July 18, 2002, Tomasetta and Hovanec attended a Compensation Committee meeting where the Committee granted 178,800 options to 48 new hires and certain current employees. Vitesse's stock price declined thereafter, and on August 20, 2002, Hovanec repriced these options and gave them a revised grant date of August 15, 2002. A copy of the option grant schedule that management submitted to the Compensation Committee at the July 18 meeting contains handwritten notations that state "$2.42" and "grant as of July 31, 2002." The July 31 date is crossed out and on top of this date there is another handwritten date of "8-15-02." The

handwritten phrase thus reads "grant as of 8-15-02." This notation is signed by Hovanec and there is another handwritten notation stating "(revised 8-20-02 by Gene.)"

103. The closing price of Vitesse's stock on August 15, 2002 was $1.26. This price represents the second to lowest closing price of the Company's stock between July 18th and August 20, 2002. (Vitesse's stock closed just $0.01 lower on August 12, 2002.)

104. On or about August 23 2002, Hovanec signed the Grant Notices for these grants which contained the false August 15, 2002 grant date. The minutes documenting the Compensation Committee's July 18, 2002 meeting are backdated and state that the exercise price for these options is 100% of the fair market value of the company's stock on August 15, 2002. Hovanec signed the minutes.

105. In its Stock Options Restatement, Vitesse concluded that these options were first granted on July 18, 2002, and then repriced on September 19, 2002, the date of the next board meeting when the Compensation Committee minutes were final and signed. As a result of the repricing, Vitesse applied variable accounting to the options, recording approximately $455,825 in compensation expense in 2003, and reversing approximately $207,335 of this expense in 2004 and $35,346 of this expense in 2005 to give effect to subsequent declines in Vitesse's stock price.

f. December 17, 2003 Employee Evergreen and Outstanding Performer Grants

106. Tomasetta and or Hovanec backdated Vitesse's fiscal year 2004 employee evergreen and outstanding performer option grants from April 17, 2004 to December 17, 2003. This grant included approximately 4,277,000 options that went to approximately 655 employees.

107. Tomasetta and Hovanec attended a meeting of Vitesse's Compensation Committee on October 16th, 2003 at which time the Committee reviewed preliminary proposals

for outstanding performer and officer and employee evergreen grants. Eight days later, Vitesse's HR Department forwarded preliminary employee evergreen option proposals to Company managers (including Tomasetta and Hovanec) requesting that they review, edit, and return the revised proposals by November 21st so that Tomasetta could approve the grants. Vitesse's managers were still submitting revisions to the HR Department through the end of January 2004. On December 22, 2003, an employee in the HR Department sent an email to a Vitesse vice president stating that the grant date and exercise price for the evergreen and outstanding performer grants had not yet been determined.

108. After Tomasetta approved the revised employee evergreen proposals, the Assistant included schedules for the evergreens, as well as for proposals for outstanding performer grants, in the board book that the Assistant prepared for the Board's next meeting on January 26, 2004. At that meeting, which Tomasetta and Hovanec attended, Vitesse's Compensation Committee reviewed and granted the option proposals that were presented. On February 5, 2004, an employee in the HR Department sent an email to Vitesse managers (including Tomasetta and Hovanec) informing them that Tomasetta had approved the outstanding performer grants with a grant date of December 17, 2003.

109. Vitesse's January 26, 2004 Compensation Committee meeting minutes are backdated. They state that the Committee granted the employee evergreens and outstanding performer options on January 26th, and then they further state that the exercise price for the options is the fair market value of Vitesse's stock "on the date of grant, December 17, 2003." The closing price of Vitesse's stock on December 17th was $5.69. This price is the lowest closing price of the Company's stock between September 2003 and March 2004.

110. As alleged below, during November 2005 through April 2006, faced with media inquiries concerning possible backdating at Vitesse, Tomasetta and Hovanec attempted to cover up the fact that they had backdated option grants. To this end, Hovanec drafted and signed minutes that document a telephonic meeting of the Compensation Committee on December 17, 2003 that never occurred. Hovanec made it appear as though these minutes had been created contemporaneously with the December 17th meeting date.

111. In its Stock Options Restatement, Vitesse revised the measurement date for these grants to April 17, 2004, the date of the next Board meeting where the January 26th Compensation Committee meeting minutes were final and signed. Based on the closing price of Vitesse's stock on April 17th, these options were in the money on a per share basis by $0.08, and in the aggregate by $336,000. Hovanec signed the January 24th minutes, and Hovanec and Tomasetta signed the corresponding Grant Notices which contained the false grant date.

6. Tomasetta's and Hovanec's Attempt to Conceal Their Backdating Scheme in The Face of Media Inquiries During November 2005 to April 2006

112. In early November 2005, the *Journal* contacted Vitesse about the legitimacy of its option granting practices. After the *Journal's* inquiries, Mody contacted Vitesse's Outside Counsel. Outside Counsel told Mody not to destroy or create any documents, and then it reviewed some of the Company's Compensation Committee meeting minutes. In mid-November, Outside Counsel informed Mody that it was concerned because some of the minutes were backdated on their face, meaning that the option grant dates disclosed in the text were different from the meeting dates. During different phone calls, Outside Counsel repeated this concern to Hovanec and Tomasetta, and it specifically advised Tomasetta and Mody that Vitesse should conduct an independent investigation into the Company's option grant practices. In late November 2005, Outside Counsel informed Tomasetta that there might be very significant

charges to the Company's financial statements because certain stock option grants were not properly accounted for, and it warned him against signing Vitesse's upcoming filing of its Form 10-K for fiscal year ended September 30, 2005 unless he was certain that the Company's financial statements were accurate.

113. Rather than follow Outside Counsel's advice, Tomasetta and Hovanec attempted to cover up their backdating practice by lying to Vitesse's board members and its Auditor, by creating and signing three bogus Compensation Committee meeting minutes to document grants at meetings that did not occur, and by Tomasetta recording two of these phantom meetings in his Palm Pilot.

114. Specifically, in late November 2005, Tomasetta instructed Mody to draft two sets of Compensation Committee minutes, dated April 6 and October 2, 2001, which were the backdated grant dates for two large evergreen grants to employees and officers. In fact, as Tomasetta later admitted to counsel for Vitesse's Special Committee ("Special Committee Counsel"), Tomasetta had only recently signed the former, Hovanec the latter, and on November 22, Tomasetta arranged for the former head of Vitesse's Compensation Committee to sign both. On or about December 13, 2005, Hovanec directed the Assistant to draft another set of Compensation Committee minutes, which Hovanec signed, for a purported December 17, 2003 meeting that never occurred. December 17, 2003 represents the backdated grant date for another evergreen grant. All three of these minutes purport to document the granting of options on their respective dates. Vitesse's Compensation Committee, however, did not grant any options on these dates.

115. After creating the two false 2001 Committee minutes, Tomasetta and Hovanec attended a December 6, 2005 Audit Committee meeting that was also attended by Mody, three

Vitesse directors, and Vitesse's Auditors. At this meeting, Mody presented a memo that Mody had prepared to document management's review of option grant practices during fiscal years 1996-2005. This memo, which all of the meeting participants discussed, assesses whether the Company's evergreen option grants were properly approved and accounted for in conformity with APB 25. The memo concludes that with the exception of the Company's fiscal year 1998 evergreen grant, all of Vitesse's other evergreen grants conformed to APB 25. The memo concludes that the 1998 evergreen grant had been inadvertently misdated to the same grant date as that year's directors' grant, and that the resulting unrecorded compensation expense was immaterial. Six days later, Tomasetta signed and certified Vitesse's fiscal 2005 Form 10-K which failed to properly record or disclose the compensation costs from the grants he and Hovanec had previously backdated. The following day, on December 13, Vitesse filed its 2005 Form 10-K with the Commission.

116. During February and March 2006, the *Journal* began contacting Vitesse's directors to discuss the Company's option grant practices. In a series of emails between Tomasetta, Hovanec, Mody and several of Vitesse's directors, Tomasetta and Hovanec both falsely stated, in substance, that Vitesse set the exercise price of the Company's stock options according to the closing price of the stock on the date the directors approved the options. On March 18, 2006, the *Journal* published an article raising questions of possible backdating of CEO option grants at a number of public companies, including Vitesse.

117. In early April 2006, a Special Committee of Vitesse's board hired the Special Committee Counsel to investigate the Company's prior stock option grants. Early in the investigation, Tomasetta and Hovanec tried to make it appear as though the two 2001 Compensation Committee meeting minutes they had created in November 2005 had been

prepared contemporaneously with their purported meeting dates. On April 12, Hovanec typed these two sets of minutes on Tomasetta's computer. Tomasetta and Mody copied them to a disc, and then from this disc Tomasetta copied them onto the Assistant's computer. With Mody and Hovanec watching, Tomasetta turned back the clock on the Assistant's computer so that the creation date for these two documents would match the oldest creation date associated with other meeting minutes found on the Assistant's computer. Tomasetta admitted to Special Committee Counsel that he had told Hovanec and Mody that this conduct "is the Martha Stewart thing, this is dumb, we need to stop - we're going to go to jail."

118. Tomasetta eventually admitted to Special Committee Counsel the above facts concerning the recent creation and signing of the April 6 and October 2, 2001 minutes, including inserting them on the Assistant's computer and his comment about Martha Stewart and going to jail. Despite his admissions, Tomasetta falsely maintained that Vitesse had actually held Compensation Committee meetings on April 6 and October 2, 2001. Tomasetta also failed to acknowledge to Special Committee Counsel that he had entered the April 6 and October 2, 2001 Committee meeting dates in his Palm Pilot in November 2005.

C. THE INDIVIDUAL DEFENDANTS CAUSED VITESSE TO FILE MATERIALLY FALSE AND MISLEADING FINANCIAL STATEMENTS AND OTHER FILINGS

1. Annual Reports, Quarterly Reports, Registration Statements, and Sarbanes-Oxley Certifications

119. As a public company, Vitesse filed annual reports with the Commission that included audited financial statements certified by the Company's Auditor. As a result of the revenue and options backdating schemes alleged above, and in furtherance of such schemes, each of Vitesse's 10 annual reports on Forms 10-K for fiscal years ended September 30, 1996 to September 30, 2005 was false and misleading, as set forth below. Each of these annual reports

failed to include compensation expense for backdated and/or repriced stock option grants, and contained false and misleading accounting and other disclosures related to stock option grants. Further, each of Vitesse's five Forms 10-K for fiscal years 2001 to 2005 improperly reported revenue resulting from the revenue recognition fraud, and contained false and misleading disclosures related to Vitesse's revenue recognition practices.

120. In each of its annual reports on Form 10-K for Vitesse's fiscal years ended September 30, 1996 through September 30, 2005 filed on October 25, 1996, December 29, 1997, December 23, 1998, December 23, 1999, December 19, 2000, December 17, 2001, December 18, 2002, December 16, 2003, December 10, 2004, and December 13, 2005, Vitesse disclosed that it accounted for stock options in accordance with APB 25. In each of its annual reports on Form 10-K filed on December 19, 2000, December 17, 2001, December 18, 2002, December 16, 2003, December 10, 2004, and December 14, 2005, Vitesse disclosed that it complied with FIN 44 and that it records compensation expense for stock options only if the market price of the company's stock exceeds the exercise price on the date of grant. In each of these annual reports, Vitesse did not report any compensation expense for stock options that it granted to employees, under the company's shareholder approved stock option plans, with an exercise price below the company's stock price on the date of grant.

121. In its annual report on Form 10-K filed on October 25, 1996, Vitesse disclosed that under the Company's shareholder approved 1991 Stock Option Plan the exercise price for all stock options must be equal to the fair market value of its stock on the date of grant. This Form 10-K also discloses that under the Company's shareholder approved 1989 Stock Option Plan the exercise price for all incentive stock options must be equal to the fair market value of its stock on the date of grant and the exercise price for nonstatutory stock options must be at least 85% of the

fair market value of the Company's stock on the date of grant. In its annual reports on Form 10-K filed on December 29, 1997, December 23, 1998, December 23, 1999, December 19, 2000, December 17, 2001, December 18, 2002, December 16, 2003, December 10, 2004, and December 13, 2005, Vitesse disclosed that under all of the Company's shareholder approved stock option plans, "The exercise price of all stock options must be at least equal to the fair market values of the shares of common stock on the date of grant."

122. In its annual reports on Form 10-K filed on December 19, 2000 and December 17, 2001, Vitesse disclosed that it recorded deferred compensation expense for stock options in connection with certain acquisitions. In its annual reports on Form 10-K filed on December 18, 2002, December 16, 2003, and December 10, 2004, Vitesse disclosed that it incurred compensation expense as a result of assuming the stock option plans, and related option grants, of certain companies that it had acquired. Vitesse disclosed in substantially similar words that, as a result, when reviewing such disclosed expense, "it appears that certain options were granted at less than fair market value, but which really represent grants given to employees of the acquired companies prior to their respective acquisitions by Vitesse. Other than the foregoing, all of the options grants made by Vitesse to employees and directors are granted at fair market value at the time of grant." Further, Vitesse disclosed in its annual report on Form 10-K filed on December 10, 2004 and December 13, 2005 that, "We have no options granted to employees in which the market price of the underlying stock exceeded the exercise price on the date of grant."

123. Contrary to the representations that it made in paragraphs ¶¶ 120-122, Vitesse, through the actions of Tomasetta and Hovanec, was incurring substantial compensation expense as a result of granting in-the-money employee stock options under the Company's shareholder approved 1989 Stock Option Plan, 1991 Stock Option Plan and 2001 Stock Incentive Plan. In

the financial statements of each of Vitesse's Forms 10-K for fiscal years ended September 30, 1996 through September 30, 2005, Vitesse failed to record approximately $184 million in compensation expenses resulting from backdated and repriced option grants. These unrecorded expenses overstated Vitesse's annual pretax income or understated it annual pretax loss by between 1.7% and 45.7% in fiscal years 1996 through 2005, as identified specifically above, rendering the financial statements materially false and misleading.

124. In its annual report on Form 10-K filed on December 17, 2001 for the fiscal year ended September 30, 2001, Vitesse also disclosed that its revenue recognition policy for product sales was: "Production revenue is recognized when products are shipped to customers, which is when title and risk of loss transfers to the customer." Vitesse's annual reports on Form 10-K for the subsequent fiscal years 2002 through 2005 filed with the Commission on December 18, 2002, December 16, 2003, December 10, 2004, and December 14, 2005 state that Vitesse accounted for revenue from product sales as follows: "Production revenue is recognized when persuasive evidence of an arrangement exists, the sales price is fixed, products are shipped to customers, which is when title and risk of loss transfers to the customer, and collectability is reasonably assured." Each of Vitesse's annual reports for fiscal years 2001 through 2005 also state in substantially similar terms related to product sales to Nu Horizons, "Certain of the Company's production revenue are made to a major distributor under an agreement allowing for price protection and right of return on products unsold. Accordingly, the Company defers recognition of revenue on such products until the products are sold by the distributor to the end user."

125. Contrary to the representations that it made in ¶ 124, Vitesse improperly recorded revenue in material amounts in each of the financial statements included in these annual reports

on Form 10-K for its fiscal years 2001 through 2005, rendering the revenue and income reported in those financial statements, and the revenue recognition policies included in those reports for product sales and for sales to its major distributor, materially false and misleading. Vitesse also materially misstated the accounts receivable balances in the financial statements for certain of these years.

126. Tomasetta reviewed and signed each of Vitesse's annual reports on Form 10-K for the fiscal years 1996 through 2005 referenced in ¶¶ 120-124. Hovanec reviewed and signed each of Vitesse's annual reports on Form 10-K for fiscal years 1996 through 2004. Mody participated in preparing and reviewed each of Vitesse's annual reports on Form 10-K for fiscal years 2001 through 2005, and he signed the annual report on Form 10-K for fiscal year 2005. Kaplan participated in preparing and reviewed each of Vitesse's annual reports on Form 10-K for fiscal years 2001 through 2005.

127. Tomasetta and Hovanec knew, should have known, or were reckless in not knowing that each of the foregoing annual reports that they signed and reviewed materially misrepresented Vitesse's revenues, stock-based compensation expense, income, and in certain years accounts receivable, and made materially false and misleading disclosures and omitted material information about Vitesse's revenue recognition and stock option practices and policies.

128. Mody and Kaplan knew, should have known, or were reckless in not knowing that each of the foregoing annual reports that they participated in preparing, reviewed, and/or signed materially misrepresented Vitesse's revenues, income, and accounts receivable, and made materially false and misleading disclosures and omitted material information about Vitesse's revenue recognition practices and policies.

129. In addition, Vitesse filed 30 quarterly reports on Forms 10-Q between June 24, 1996 and February 8, 2006, which falsely reflect that Vitesse incurred no compensation expense for options granted to employees with exercise prices below the company's stock price on the date of grant and for options that were repriced. Nine of Vitesse's Forms 10-Q, filed from May 13, 2003 to February 8, 2006, falsely state that the Company applied APB 25 during the relevant time, and six of its Forms 10-Q, filed from February 13, 2004 to August 9, 2005, falsely state that Vitesse did not grant in-the-money options.

130. Thirteen of Vitesse's Forms 10-Q, filed from February 2002 to February 2006, falsely reflect overstated revenue, and thus income, and certain of these reports also contain overstated accounts receivable balances as a result of Vitesse's improper revenue recognition practices. Each of the 12 quarterly reports filed during March 31, 2002 through February 2006 also contain false and misleading revenue recognition policy disclosures that state in substantially similar terms that Vitesse recognizes product revenue when "products are shipped to customers, which is when title and risk of loss transfers to the customers." The four quarterly reports filed between February 2005 and February 2006 also contain the following false and misleading disclosure related to product sales to Nu Horizons: "Certain of the Company's production revenue are made to a major distributor under an agreement allowing for price protection and right of return on products unsold. Accordingly, the Company defers recognition of revenue on such products until the products are sold by the distributor to the end user."

131. Tomasetta reviewed all 30 of these quarterly reports on Form 10-Q. Hovanec reviewed and signed each of the 27 Vitesse quarterly reports filed with the Commission between June 24, 1996 and February 8, 2005. Mody participated in preparing and reviewed each of the quarterly reports that Vitesse filed with the Commission from February 14, 2002 through

February 8, 2006, and he signed the quarterly reports filed from May 2005 through February 8, 2006. Kaplan participated in preparing each of the quarterly reports filed with the Commission from February 14, 2002 through February 8, 2006.

132. Tomasetta and Hovanec knew, should have known, or were reckless in not knowing that each of the foregoing quarterly reports that they signed and/or reviewed materially misrepresented Vitesse's revenues, stock-based compensation expense, income, and in certain quarters accounts receivable, and made materially false and misleading disclosures and omitted material information about Vitesse's revenue recognition and stock option practices and policies.

133. Mody and Kaplan knew, should have known, or were reckless in not knowing that each of the foregoing quarterly reports that they participated in preparing, reviewed, and/or signed materially misrepresented Vitesse's revenues, income, and in certain periods accounts receivable, and made materially false and misleading disclosures and omitted material information about Vitesse's revenue recognition practices and policies.

134. Tomasetta signed Sarbanes-Oxley 302 certifications for the annual reports on Form 10-K for fiscal years 2002, 2003, 2004 and 2005, and for ten quarterly reports on Form 10-Q filed on February 14, 2003 through February 8, 2006. Hovanec signed Sarbanes-Oxley 302 certifications for the annual reports on Form 10-K for fiscal years 2002, 2003, and 2004, and for seven quarterly reports on Form 10-Q filed on February 14, 2003 through February 8, 2005. Mody signed Sarbanes-Oxley 302 certifications for the annual report on Form 10-K for fiscal year 2005, and for three quarterly reports on Form 10-Q filed between May 10, 2005 through February 8, 2006.

135. The foregoing certifications that Tomasetta, Hovanec, and Mody signed referenced in ¶ 134, state that they had reviewed the report and that (a) the report did not contain

any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading; (b) the financial statements, and other financial information included in each report, fairly presented in all material respects the financial condition, results of operations, and cash flows of Vitesse as of, and for, the period presented in the report; and that (c) Tomasetta, Hovanec and Mody had disclosed to Vitesse's auditors all significant deficiencies in the design or operation of Vitesse's internal controls and any fraud, whether or not material, that involved management or other employees who had a significant role in Vitesse's internal controls. Tomasetta, Hovanec and Mody had ample information at the time that they signed these certifications to know that they were not true.

136. Between October 23, 1996 and March 23, 2006, Vitesse filed a total of 37 registration statements, that incorporated by reference materially false and misleading financial statements, as well as materially false and misleading disclosures from Vitesse's annual reports on Form 10-K, quarterly reports on Form 10-Q and proxy statements. Sixteen of these registration statements were filed on Forms S-3 or S-3/A, and 21 were filed on Forms S-8 or S-8 POS. Vitesse also filed a prospectus supplement on February 6, 2006, which incorporates by reference Vitesse's Form 10-K filed on December 10, 2004, and Vitesse's Forms 10-Q filed on February 8, 2005 and May 10, 2005. Tomasetta and Hovanec signed each of the 16 Forms S-3 or S-3/A that Vitesse filed on October 23, 1996, February 19, 1999, April 8, 1999, October 22, 1999, November 4, 1999, November 24, 1999, February 15, 2000, June 7, 2000 (two S-3s), September 5, 2000, December 20, 2000, May 23, 2001, June 11, 2001, May 12, 2003, December 29, 2004 and March 16, 2005. Tomasetta and Hovanec also signed each of the 19 Forms S-8 or S-8 POS that Vitesse filed from May 22, 1998 through November 23, 2004. Tomasetta and

Mody each signed two Forms S-8 that Vitesse filed on November 30, 2005 and March 23, 2006. Kaplan participated in preparing various of these registration statements during late 2001 through at least 2005.

137. Tomasetta, Hovanec, and Mody knew, should have known, or were reckless in not knowing that these registrations statements were false and misleading by their incorporation of materially false and misleading financial statements and stock option and revenue recognition disclosures from Vitesse's annual reports on Form 10-K, quarterly reports on Form 10-Q, and/or proxy statements.

2. Forms 4 and 5 and Proxy Statements

138. In addition, Tomasetta and Hovanec filed Forms 4 and 5 with the Commission in connection with stock option grants that each received. Tomasetta and Hovanec permitted false and misleading statements to be made in those filings. The Forms 4 and 5 were false in that they reported as a "transaction date" the purported dates of stock option grants when in fact options were never granted on those transaction dates. The false information with respect to the "transaction date" permitted Tomasetta and Hovanec to conceal the compensation that they received through the grant of in-the-money options. The Forms 4 were also misleading in that they disclosed an "expiration date," which under Vitesse's various option plans was required to be ten years from the date of grant, that suggested a particular date of grant for stock option grants when in fact options were never granted on the date implied by the expiration date. The forms filed were as follows (share totals are adjusted for stock splits in 1997, 1998 and 1999):

Filer	Date of Filing	Form	False Transaction Date	Purported Option Grant Expiration Date	Total Shares
Tomasetta	10/7/96	4	1/23/96	1/23/06	300,000
Tomasetta	8/8/97	4	3/19/97	3/19/07	600,000

Tomasetta	5/8/98	4	1/1/98	1/1/08	900,000
Tomasetta	4/9/99	4	10/5/98	10/5/08	760,000
Tomasetta	10/30/01	5	4/6/01	4/6/11	1,200,000
Tomasetta	3/8/02	4	10/2/01	10/2/11	720,000
Tomasetta	8/14/02	4	10/2/01	10/2/11	1,205,048
Tomasetta	8/28/02	4	10/2/01	10/2/11	1,205,048
Tomasetta	10/22/03	4	10/20/03	10/20/2013	950,000
Hovanec	9/10/96	4	1/23/96	1/23/06	180,000
Hovanec	5/8/98	4	1/1/98	1/1/08	210,000
Hovanec	3/10/99	4	10/5/98	10/05/08	160,000
Hovanec	10/30/01	5	4/6/01	4/6/11	300,000
Hovanec	3/8/02	4	10/2/01	10/2/11	230,000
Hovanec	8/14/02	4	10/2/01	10/2/11	303,245
Hovanec	10/22/03	4	10/20/03	10/20/2013	250,000

139. Tomasetta and Hovanec knew, should have known, or were reckless in not knowing that they made materially false and misleading statements and disclosures in these filings that they reviewed and/or signed.

140. Vitesse also filed proxy statements with the Commission on December 18, 2002 and December 10, 2004, wherein it solicited proxies to reelect Tomasetta and other directors to Vitesse's Board of Directors. These proxy statements disclose false grant dates for stock options issued to named executive officers including Tomasetta and Hovanec. The proxy statement filed on December 18, 2002 falsely states that stock options were granted to named executive officers on October 2, 2001, and the proxy statement filed on December 10, 2004 falsely states that stock options were granted to named executive officers on October 20, 2003. The information relating to executive compensation and stock option grants reported in the proxy statements was incorporated by reference into the annual reports on Form 10-K signed by Tomasetta and/or Hovanec and/or Mody during this period.

141. As a result of the misconduct of Tomasetta and Hovanec, Vitesse's books and records falsely and inaccurately reflected, among other things, the grant dates of stock options,

revenues, stock-based compensation expense, income, and accounts receivable, and the Company's financial condition. Additionally, Tomasetta and Hovanec circumvented internal accounting controls and, by virtue of their misconduct, failed to maintain a system of internal accounting controls sufficient to provide assurances that stock option grants, revenues, income, and accounts receivable were accurately recorded to permit the proper preparation of financial statements in conformity with GAAP.

142. As a result of the misconduct of Mody and Kaplan, Vitesse's books and records falsely and inaccurately reflected, among other things, revenues, stock-based compensation expense, income, and accounts receivable, and the Company's financial condition. Additionally, Mody and Kaplan circumvented internal accounting controls and, by virtue of their misconduct, failed to maintain a system of internal accounting controls sufficient to provide assurances that the Company's revenues, income, and accounts receivable were accurately recorded to permit the proper preparation of financial statements in conformity with GAAP.

D. MISREPRESENTATIONS TO VITESSE'S AUDITOR

143. In addition to the conduct alleged above by which Tomasetta, Hovanec, Mody, and Kaplan each engaged in conduct to mislead Vitesse's Auditor and to conceal their fraud through the falsification of documents, among other actions, each of them also knowingly made false and misleading representations to the Auditor in management representations letters that they signed and provided to the Auditor. These letters were provided to the Auditor in the course if its annual audits and quarterly reviews of the Company's financial statements, among other reasons.

144. In substantially similar words, the letters Tomasetta, Hovanec, Mody, and Kaplan signed and provided to the Auditor in connection with audits or reviews of the

Company's financial statements during the period from 1996 through 2006 contain the following acknowledgements:

145. "We acknowledge our responsibility for the design and implementation of programs and controls to prevent, deter and detect fraud. We understand that the term 'fraud' includes misstatements arising from fraudulent financial reporting." and that "[m]isstatements arising from fraudulent financial reporting are intentional misstatements, or omissions of amounts or disclosures in financial statements to deceive financial statement users."

146. "[W]e confirm we are responsible for the fair presentation in the consolidated financial statements of financial position."

147. "We accept and acknowledge our responsibility for establishing and maintaining effective internal control over financial reporting."

148. Each of these management letters also contains affirmative representations in respect to the Company's financial statements, financial records, transactions, and possible fraud by management or employees, as follows:

149. "The consolidated financial statements referred to above are fairly presented in conformity with accepted accounting principles generally accepted in the United States of America."

150. "We have made available to you. . . all financial records and related data"

151. "There are no . . . material transactions that have not been properly recorded in the accounting records underlying the consolidated financial statements"

152. "We have no knowledge of any fraud or suspected fraud affecting the entity involving: (a) management; (b) employees who have significant roles in internal control, or (c) others where the fraud could have a material effect on the consolidated financial statements."

153. These representations were false, as Tomasetta, Hovanec, Mody, and Kaplan each knew as a result of the revenue recognition fraud each of them engaged in and as a result of the stock option backdating fraud Tomasetta and Hovanec perpetrated, as detailed in this Complaint.

154. Tomasetta, Hovanec, Mody, and Kaplan also falsely stated in management representation letters provided to the Auditor during January 2002 through January 2006 that, "There have been no false statements affecting the Company's consolidated financial statements made to you."

155. In management representation letters for fiscal years 2001 through 2005, Tomasetta, Hovanec, Mody, and/or Kaplan represented in substantially similar words that, "Receivables reported in the consolidated financial statements represent valid claims against debtors for sales or other charges arising on or before the balance-sheet date and have been appropriately reduced to their estimated net realizable value." Tomasetta, Hovanec, Mody, and/or Kaplan knew that this representation was false as a result of their fraudulent revenue recognition practices.

156. In management representation letters for fiscal years 1999 through 2005, with the exception of fiscal year 2002, Tomasetta and/or Hovanec falsely represented in substantially similar words that, "(s)tock-related awards to employees have been accounted for in accordance with the provisions of APB Opinion No. 25, *Accounting for Stock Issued to Employees.*

157. Tomasetta knowingly signed false management representation letters for annual audits covering fiscal years 1996 through 1999 and 2005, and for quarterly reviews in 2005 and 2006. The letters for the annual audits are dated December 12, 2005, October 14, 1999, October 14, 1998, October 21, 1997, and October 18, 1996. The letters for the quarterly reviews are dated January 23, 2006 and July 20, 2005.

158. Hovanec knowingly signed false management representation letters for annual audits covering fiscal years 1996 through 2004, and numerous quarterly reviews from at least 1999 through 2005. These letters for the annual audits are dated, October 28, 2004, October 23, 2003, October 18, 2002, October 19, 2001, October 16, 2000, October 14, 1999, October 14, 1998, October 21, 1997, and October 18, 1996. The letters for the quarterly reviews are dated April 21, 2005, January 18, 2005, April 22, 2004, February 11, 2004, July 21, 2003, April 21, 2003, January 24, 2002, July 17, 2002, July 13, 2001, January 19, 2001, August 14, 2000, May 12, 2000, January 7, 2000, and April 7, 1999.

159. Mody knowingly signed false management representation letters for annual audits covering fiscal years 2001 through 2005, and for quarterly reviews during 2002 through January 2006. These letters for the annual audits are dated December 12, 2005, October 28, 2004, October 23, 2003, October 18, 2002, and October 19, 2001. The letters for the quarterly reviews are dated January 23, 2006, July 20, 2005, April 21, 2005, January 18, 2005, July 16, 2004, April 22, 2004, February 11, 2004, July 21, 2003, April 21, 2003, July 17, 2002, and January 24, 2002.

160. Kaplan knowingly signed a false management representation letter for the fiscal 2005 annual audit dated December 12, 2005.

161. Each of the defendants also provided false management representation letters to the Auditor that reaffirmed certain of these above letters in connection with annual audits. Each of the defendants also provided such letters in connection with the Auditors review and inclusion of their audit reports in Vitesse registration statements for securities offerings.

E. TOMASETTA, HOVANEC, MODY AND KAPLAN PROFITED FROM THEIR SCHEMES

162. Tomasetta, Hovanec, Mody, and Kaplan profited from their misconduct. Tomasetta and Hovanec personally benefited from their options backdating scheme by awarding

themselves in millions of dollars in potential profit as a result of the in-the-money options that they received. By exercising backdated options, each of them also actually reaped tangible financial benefits from their fraud in the amounts of millions of dollars.

163. Tomasetta and Hovanec obtained additional profits through the sale of shares of Vitesse stock, acquired largely through their exercises of Vitesse stock options, which they sold into the market at times when the price of the Company's stock was inflated by the fraud.

164. Tomasetta, Hovanec, Mody, and Kaplan also each profited by receiving cash bonuses during their fraudulent conduct. Bonuses received by Tomasetta and Hovanec were in part based on achieving financial targets, including operating income targets. If Vitesse had properly recorded compensation expense for the option grants that Tomasetta and Hovanec had backdated and repriced, then it would have recorded lower operating income results and Tomasetta and Hovanec would have received smaller bonuses. In addition, bonuses awarded to or paid to Tomasetta, Hovanec, Mody, and Kaplan during their fraud were based upon bonus plans that provided that no bonus award was considered earned, but instead was totally dependent on the officer remaining an employee at the time the bonus payments vested and were made, which was typically in one or more installments during subsequent years. Tomasetta's, Hovanec's, Mody's, and Kaplan's continued employment during their fraud therefore allowed each of them to receive their bonus payments. Had Vitesse's Board of Directors discovered their fraud earlier and terminated them, Tomasetta, Hovanec, Mody, and Kaplan would not have received their bonus payments.

FIRST CLAIM FOR RELIEF

Violations of Exchange Act Section 10(b) and Exchange Act Rule 10b-5
(All Defendants)

165. The Commission realleges and incorporates by reference Paragraphs 1 through 164.

166. Vitesse, Tomasetta, Hovanec, Mody, and Kaplan, directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange, in connection with the purchase or sale of securities, and with knowledge or recklessness: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, transactions, practices or courses of business that operated or would operate as a fraud or deceit upon other persons.

167. By engaging in the conduct alleged above, Vitesse, Tomasetta, Hovanec, Mody and Kaplan, and each of them, directly or indirectly, violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 [15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5].

SECOND CLAIM FOR RELIEF

Violations of Securities Act Section 17(a)
(All Defendants)

168. The Commission realleges and incorporates by reference Paragraphs 1 through 164.

169. Vitesse, Tomasetta, Hovanec, Mody and Kaplan, directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, in connection with the offer or

sale of securities, and with knowledge, recklessness, or negligence: 1) employed devices, schemes, or artifices to defraud; 2) obtained money or property by means of untrue statements of material fact or by omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or 3) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of Vitesse securities.

170. By engaging in the conduct alleged above, Vitesse, Tomasetta, Hovanec, Mody, and Kaplan, and each of them, directly or indirectly, violated, and unless restrained and enjoined will continue to violate, Sections 17(a)(1), (2), and (3) of the Securities Act [15 U.S.C.§ 77q(a)(1), (2), and (3)].

THIRD CLAIM FOR RELIEF

Violations of Securities Act Section 13(b)(5) and Exchange Act 13b2-1 (Tomasetta, Hovanec, Mody, and Kaplan)

171. The Commission realleges and incorporates by reference Paragraphs 1 through 164.

172. By engaging in the conduct alleged above, Tomasetta, Hovanec, Mody, and Kaplan knowingly falsified books, records and accounts at Vitesse, and knowingly circumvented or knowingly failed to implement a system of internal accounting controls at Vitesse subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

173. By engaging in the conduct alleged above, Tomasetta, Hovanec, Mody, and Kaplan, directly or indirectly, falsified or caused to be falsified, books, records or accounts subject to 15 U.S.C. § 78m(b)(2)(A).

174. By reason of the foregoing, Tomasetta, Hovanec, Mody, and Kaplan, and each of them, directly or indirectly, have violated, and unless restrained and enjoined will continue to

violate, Section 13(b)(5) of the Exchange Act and Exchange Act Rule 13b2-1 [15 U.S.C. § 78m(b)(5); 17 C.F.R. § 240.13b2-1] .

FOURTH CLAIM FOR RELIEF

Violations of Exchange Act Rule 13b2-2 (Tomasetta, Hovanec, Mody, and Kaplan)

175. The Commission realleges and incorporates by reference Paragraphs 1 through 164.

176. Rule 13b2-2 of the Exchange Act [17 C.F.R. § 240.13b2-2], in relevant part, makes it unlawful for an officer or director of an issuer to, directly or indirectly: (1) make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or examination of financial statements, or the preparation or filing of any document or report required to be filed with the Commission; or (2) omit or state, or cause another person to omit or state, any material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, to an accountant in connection with: (i) any audit, review or examination of the financial statements of the issuer, or (ii) the preparation or filing of any document or report required to be filed with the Commission.

177. By reason of the foregoing, Tomasetta, Hovanec, Mody and Kaplan, and each of them, directly or indirectly, violated, and unless restrained and enjoined will continue to violate, Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

FIFTH CLAIM FOR RELIEF

Violations of Exchange Act Section 14(a) and Exchange Act Rule 14a-9 (Vitesse and Tomasetta)

178. The Commission realleges and incorporates by reference Paragraphs 1 through 164.

179. Vitesse and Tomasetta, directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, or of the facility of a national securities exchange, knowingly, recklessly, or negligently solicited proxies by means of a proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing statements which, at the time and in light of the circumstances under which they were made, were false and misleading with respect to material facts, or which omitted to state material facts which were necessary in order to make the statements made not false or misleading or which were necessary in order to correct statements in earlier false or misleading communications with respect to the solicitation of proxies for the same meeting or subject matter, in violation of Section 14(a) of the Exchange Act and Exchange Act Rule 14a-9 [15 U.S.C. § 78n(a); 17 C.F.R. § 240.14a-9].

180. By reason of the foregoing, Vitesse and Tomasetta, directly or indirectly, violated, and unless restrained and enjoined will continue to violate, Section 14(a) of the Exchange Act and Exchange Act Rule 14a-9 [15 U.S.C. § 78n(a); 17 C.F.R. § 240.14a-9].

SIXTH CLAIM FOR RELIEF

Vitesse's Violations of Exchange Act Sections 13(a) and Exchange Act Rules 12b-20, 13a-1, and 13a-13, and Aiding and Abetting These Violations by Tomasetta, Hovanec, Mody, and Kaplan

181. The Commission realleges and incorporates by reference Paragraphs 1 through 164.

182. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and 240.13a-13] require issuers of registered securities to file with the Commission factually accurate annual and quarterly reports. Exchange Act Rule 12b-20 [17 C.F.R. §240.12b-20] further provides that, in addition to the information expressly required to be included in a statement or report, there shall be added such further

material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they were made, not misleading.

183. By engaging in the conduct set forth above, Vitesse violated, and unless restrained and enjoined will continue to violate Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20,13a-1 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13].

184. By engaging in the conduct set forth above, Tomasetta, Hovanec, Mody, and Kaplan, and each of them, knowingly provided substantial assistance to Vitesse in its failure to file with Commission factually accurate annual and quarterly reports.

185. As set forth above, Tomasetta, Hovanec, Mody, and Kaplan aided and abetted, and unless restrained and enjoined will continue to aid and abet, violations of Exchange Act Section 13(a) [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13].

SEVENTH CLAIM FOR RELIEF

Vitesse's Violations of Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B) and Aiding and Abetting These Violations by Tomasetta, Hovanec, Mody, and Kaplan

186. The Commission realleges and incorporates by reference Paragraphs 1 through 164.

187. Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] requires issuers to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of its assets. Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were

recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain the accountability of assets.

188. Vitesse failed: 1) to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of its assets; and 2) to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain the accountability of assets.

189. By reason of the foregoing, Vitesse, directly or indirectly, violated, and unless restrained and enjoined will continue to violate Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

190. By reason of the foregoing, Tomasetta, Hovanec, Mody, and Kaplan knowingly or recklessly gave substantial assistance to Vitesse in its failure to make and keep accurate books, records, and accounts and its failure to devise and maintain a sufficient system of internal accounting controls.

191. As set forth above, defendants Tomasetta, Hovanec, Mody, and Kaplan, and each of them, directly or indirectly, aided and abetted, and unless restrained and enjoined will continue to aid and abet, violations of Sections 13(b)(2)(A) and 13(b)(2)(B) [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

EIGHTH CLAIM FOR RELIEF

Violations of Exchange Act Rule 13a-14 (Tomasetta, Hovanec, and Mody)

192. The Commission realleges and incorporates by reference Paragraphs 1 through 164.

193. Tomasetta, as CEO, signed false certifications pursuant to Rule 13a-14 of the Exchange Act that were included in Vitesse's fiscal 2002, 2003, 2004, and 2005 annual reports, as well as ten quarterly reports on Form 10-Q filed between February 14, 2003 through February 8, 2006. Hovanec, as CFO, signed false certifications pursuant to Rule 13a-14 of the Exchange Act that were included in Vitesse's fiscal 2002, 2003, and 2004 annual reports, as well as seven quarterly reports on Form 10-Q filed between February 14, 2003 through February 8, 2005. Mody, as CFO, signed false certifications pursuant to Rule 13a-14 of the Exchange Act that were included in Vitesse's fiscal 2005 annual report, as well as quarterly reports three quarterly reports on Form 10-Q filed between May 10, 2005 through February 8, 2006.

194. By reason of the foregoing, Tomasetta, Hovanec, and Mody, and each of them, violated, and unless restrained and enjoined will continue to violate, Exchange Act Rule 13a-14 [17 C.F.R § 240.13a-14].

NINTH CLAIM FOR RELIEF

Violations of Exchange Act Section 16(a) and Exchange Act Rule 16a-3 (Tomasetta and Hovanec)

195. The Commission realleges and incorporates by reference Paragraphs 1 through 164.

196. At all relevant times, defendants Tomasetta and Hovanec were officers of Vitesse within the meaning of Section 16(a)(1) of the Exchange Act [15 U.S.C. § 78p(a)(1)].

197. Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Exchange Act Rule 16a-3 [17 C.F.R. § 240.16a-3] require officers, directors and beneficial owners of more than ten percent of any class of equity security registered pursuant to Exchange Act Section 12 [15 U.S.C. § 78l] to file periodic reports disclosing any change of beneficial ownership of those securities.

198. Defendants Tomasetta and Hovanec filed Forms 4 with the Commission that misrepresented the purported grant dates of backdated options that they received.

199. By reason of the foregoing, defendants Tomasetta and Hovanec, and each of them, violated, and unless restrained and enjoined will continue to violate, Section 16(a) of the Exchange Act and Exchange Act Rule 16a-3 [15 U.S.C. § 78p(a); 17 C.F.R § 240.16a-3].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter a final judgment:

I.

Permanently enjoining defendant Vitesse from violating, directly or indirectly, Section 17(a) of the Securities Act and Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-13, and 14a-9 thereunder;

II.

Permanently enjoining defendant Tomasetta from violating, directly or indirectly, Section 17(a) of the Securities Act and Sections 10(b), 13(b)(5), 14(a), and 16(a) of the Exchange Act and Rules 10b-5, 13b2-1, 13b2-2, 13a-14, 14a-9, and 16a-3 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder;

III.

Permanently enjoining defendant Hovanec from violating, directly or indirectly, Section 17(a) of the Securities Act and Sections 10(b), 13(b)(5), and 16(a) of the Exchange Act and Rules 10b-5, 13a-14, 13b2-1, 13b2-2, and 16a-3 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder;

IV.

Permanently enjoining defendant Mody from violating, directly or indirectly, Section 17(a) of the Securities Act and Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13a-14, 13b2-1, and 13b2-2 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder;

V.

Permanently enjoining defendant Kaplan from violating, directly or indirectly, Section 17(a) of the Securities Act and Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13b2-1, and 13b2-2 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder;

VI.

Ordering defendants Tomasetta, Hovanec, Mody and Kaplan, and each of them, to disgorge their ill-gotten gains by virtue of the conduct alleged herein, and to pay prejudgment interest thereon;

VII.

Ordering defendants Tomasetta, Hovanec, Mody and Kaplan, and each of them, to pay civil money penalties pursuant to Section 20(d)(1) of the Securities Act and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 77(d)(1); 15 U.S.C. § 78u(d)(3)];

VIII.

Pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] bar defendants Tomasetta, Hovanec, and Mody, and each of them, from serving as officers or directors of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and

IX.

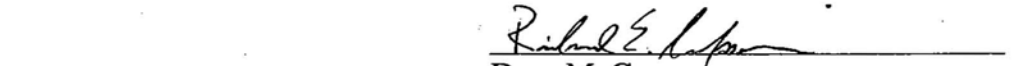
Ordering such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Under Rule 38 of the Federal Rules of Civil Procedure, the Commission demands trial by jury in this action of all issues so triable.

Dated: December 9, 2010
Washington, DC

Respectfully submitted,



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